UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

IN RE:	)	
	)	
GARLOCK SEALING TECHNOLOGIES LLC, et al,	)	No. 10-BK-31607
	)	
Debtors.	)	VOLUME XIV-A
	)	MORNING SESSION

TRANSCRIPT OF ESTIMATION TRIAL
BEFORE THE HONORABLE GEORGE R. HODGES
UNITED STATES BANKRUPTCY JUDGE
AUGUST 8, 2013

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E X H I B I T S

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E X H I B I T S

DEBTORS' EXHIBITS:

P R O C E E D I N G S

AUGUST 8, 2013, COURT CALLED TO ORDER 9:00 A.M.:

MR. WORF: Good morning, Your Honor.

JAMES L. PATTON,

CROSS EXAMINATION

BY MR. WORF:

Q. Good morning, Mr. Patton.

A. Good morning, Mr. Worf.

Q. Mr. Patton, were you here when Dr. Bates discussed his estimate of a typical mesothelioma claimant against Garlock having 36 assertions of exposure against various companies?

A. No.

Q. And were you here when he said that 22 of those would be trusts?

A. I was not here.

Q. What about when he said that -- are you aware that he said that 18 of the 22 that he quantified came from trust claims, and four of the 22 came from ballots?

A. I'm aware that he includes trust claims and he includes ballots, the breakdown I'm not aware of -- or I don't recall.

Q. Well, I just want to put that out there. Let's start with trust claims, because they're obviously more significant in Dr. Bates' quantification.

By the way, have you read Dr. Bates' report?

A. I have not.

Q. And you have no opinion about what the right answer to the typical number of exposures that a mesothelioma claimant would assert?
A. It doesn't strike me that there is a right answer to that question.
Are you asking me whether I have a view about the question, how many defendants does a mesothelioma claimant typically sue?
Q. How many companies they assert they were exposed in that company's products; you don't have any opinion on that in this case, do you?
A. No, I don't.
Q. Now we went through a lot of documents yesterday, but I notice that you didn't take the court through any trust distribution procedures, so I would like to start with that.
Now, we went over the AC&S TDP during your deposition. Do you remember that?
A. I do.
Q. And those procedures have this provision. They say in Section 5.7(b)(3), "the claimant must demonstrate meaningful and credible exposure prior to December 31, 1982 to asbestos or asbestos-containing products for which AC&S has legal responsibility." Do you remember that?
A. I do.
Q. And that is a provision that is commonly found in trust

distribution procedures, correct?
A. Yes, with respect to the presumptions for expedited review, this is one of the standards that has to be satisfied in order to enjoy the presumption.
Q. This isn't just talking about expedited review, this is talking about all claims that are paid under the TDP?
A. No.
Q. You don't think that's correct?
A. No, it's definitely not.
Q. While I'm getting those TDPs, let's look at this provision. This is also in the AC&S TDP.
"In general, as set forth in Section 5.3(a)(3) above, to qualify for any disease level, the claimant must demonstrate a minimum exposure to an asbestos-containing product for which AC&S has a legal responsibility. A claim based on conspiracy theories that involve no exposure to an asbestos-containing product for which AC&S has legal responsibility, are not compensable under this TDP." Do you see that?
A. I do.
Q. And that is a requirement, correct, that applies to any claim paid under the TDP?
A. It does not.
Q. You don't think it does?
A. No. These are presumptions. If one satisfies the presumptions in the TDP for, say, expedited review, then the

claim is valuated under these presumptions in a very efficient manner.

Some of these presumptions also apply to the individual review standards, which are more individualized. It requires a reviewer to look at the proof provided by the claimant.

And there's a third category that isn't spelled out explicitly in the sections you're directing me to here, but the TDP contemplates -- and I believe it's in Section 2.2 of almost every TDP, that any claim that is channeled to the trust, can be presented to the trusts -- to the trustees for evaluation and review. And if that claimant ultimately prevails, or convinces the trustees that the claim will prevail, or otherwise establishes an entitlement to payment, that claimant will be paid by the trust.

These are settlement parameters for efficiency. They do not set out the beginning and end of the question with respect to which claims are going to be paid. These tell us which claims will be paid in an expeditious fashion.

MR. WORF: May I approach the witness, Your Honor?

Q. Here's an AC&S TDP, if you would look at 5.7(b)(3), please.

A. I'm there.

Q. This not in the expedited review section. This is the section called, "Evidentiary Requirements", correct?

A. That's right. This applies to, "Every Claimant Wants to

Enjoy the Presumptions".
Q. And then let's read a little bit further than I have the excerpt. It says, "The specific exposure information required by the trust to process a claim under either expedited or individual review, shall be set forth on the proof of claim form to be used by the trust. The trust can also require submission of other or additional evidence of exposure when it deems such to be necessary." Do you see that?
A. I do.
Q. So it's talking about individual review and expedited review in this section; isn't it?
A. Section 5.7(b)(3) does talk about both of those presumptive pathways to payment.
Q. Are you aware of any trust that's paid a claim, whether an individual review or expedited review, based on a non-exposure based theory?
A. I don't dwell at that level of detail with the trusts. So the technical answer to your question is, no. But I also wouldn't know, either.
Q. Okay. Now let's look briefly at another TDP. This is Federal Mogul Trust. And just to show it has these same provisions, correct? That "under 5.7(b)(3), must demonstrate meaningful and credible exposure." That's in the Federal Mogul TDP, correct?
A. Almost every of the modern trusts, creates the same sets

of presumptive categories, that if a claimant meets the presumptive categories and definitions, including the one you just pointed to, the claimant has the ability to have his or her claim evaluated under the prescribed presumption. But this is not the only path to payment.

Q. Okay. And it has 5.7(b)(1), where it talks about, "the claimant must demonstrate a minimum exposure to an asbestos-containing product manufactured or distributed by the particular Federal Mogul entity, to which the claim relates", correct?

A. That's what that says, yes.

Q. Okay. Well, let's step away from the documents for a moment and discuss whether in general, would you agree that trusts apply a criteria for the exposure evidence they will accept, that are either similar to or stricter than the criteria that the predecessor defendant applied when it was paying claims in the tort system?

A. First of all, it's going to depend on the particular claimant. By virtue of simply writing down these rules and applying them across the board, I suspect that the trusts are in fact applying standards that are stricter than the standards that applied in the tort system, generally.

But nevertheless, to answer the question what a particular defendant applied in the tort system in evaluating claims and applying them requires that we ask questions of the

individuals who are assessing claims in each of these cases. So it will vary.

Q. Do you remember co-authoring an article in 2008 entitled, "Prepackaged Asbestos Bankruptcies, Down But Not Out"?

A. I do.

Q. Let me give you a copy of this here. I marked this as GST 7206.

(Debtors' Exhibit 7206 was marked for identification.)

BY MR. WORF:

Q. If you could turn to page 740, note 56. And you co-wrote wrote this article with Eric Green and Lawrence Fitzpatrick?

A. And Ed Harron and Travis Turner.

Q. And Mr. Green and Mr. Fitzpatrick are individuals who commonly serve as Future Claimant Representatives?

A. That's correct.

Q. And Mr. Harron is a partner of yours?

A. That's correct.

Q. If you look at this article it says, "Generally, a Section 524(g) trust will review claims using evidentiary criteria that are at least as stringent as the settlement criteria historically applied by the debtor prior to its bankruptcy filing, and as a criteria applied by other defendants in the tort system." Do you see that?

A. I do.
Q. And you cited the confirmation order in the Babcock and Wilcox case, correct?
A. Correct.
Q. Now you represented Mr. Fitzpatrick in the Pittsburgh Corning bankruptcy case, didn't you?
A. I did.
Q. Do you recall there was a confirmation hearing in that case in 2004?
A. If you say so.
MR. WORF: I mark this transcript as GST 7207.
(Debtors' Exhibit 7207 was marked for identification.)
Q. If you could turn to page 125.
A. I'm there.
Q. This is direct examination of a Mr. Ellis. He was the general counsel of Pittsburgh Corning, Corporation, correct?
A. In fact, I can't recall. I believe that's -- I'll take your word for it.
Q. Okay. But if you look at page 125.
Q. "And with respect to the evidence or requirement to show exposure to a Pittsburgh Corning product as set forth in the TDP, how do those exposure requirements compare with what you experienced in real life in the tort system?

A. My answer would be the same. They're equally as stringent, if not more stringent, than what we were finding in the tort system."

Do you see that?

A. I do.

Q. If you look at page 4 of the transcript, Mr. Harron was at that hearing, and he was present during your deposition in this case, wasn't he?

A. He was.

Q. So if the trusts are requiring evidence like what their predecessor required to settle claims, you would agree, wouldn't you, that the evidence claimants are using to obtain settlements from trusts, looks pretty similar to the evidence they were using to obtain settlements before those debtors filed for bankruptcy, correct?

A. I don't think it looks the same from the point of view of claimant.

Q. Why not?

A. Well, we heard Mr. Rice testify, for example, to the effect of the publication of a job site list. He testified to the notion that he probably increased the number of claims he could file by 25 percent. Because he would discover, and he gave an example of a shipyard that Mr. Weitz had been successful -- where Mr. Weitz had been successful in finding and presenting claims and having them paid by a defendant.

So from the point of view of the claimants, the creation of a trust changes significantly the kinds of information that claimants need to have in order to have their claims paid and allowed.

There may be situations where, like Mr. Rice mentioned specifically, where the firm seeking to have a claim paid needs to have on its account, far less information in order to have the claim paid.

A job site requires nothing more than an identification of the site at which an employee -- sorry -- at which a claimant worked; the dates that that claimant worked at that site; and the job in which the claimant was engaged.

Q. Well, as -- you said a couple things there. But the first thing I heard was that you think the change might be that more claimants can prove exposure, correct? Because this information is released and it's out there and there might be more claimants you can prove exposure against the trusts than could in the 1990s, correct?

A. That was Mr. Rice's testimony.

Q. Okay.

A. His experience with respect to his clients would be that.

Q. But then your second point is -- this is what I heard -- that it sounds inconsistent with your article and Mr. Ellis' testimony in the Pittsburgh Corning case to the extent you're suggesting that the settlement criteria that the trusts are

applying are somehow weaker than the settlement criteria that the debtors applied; isn't that correct?

A. I was speaking to what -- just now, what the experience would be from the point of view of the law firm presenting a claim.

The question you were asking me when we started this off, I believe, was, whether the standards that a claimant had to meet, were the same or different after the trust opened its doors.

From the point of view of the trust, the trust is applying standards -- focusing on the job site -- applying standards that incorporate and take advantage of information that the defendant had, and I believe in many cases information that the plaintiff law firms have about particular job sites.

And the trusts do their best to avoid requiring plaintiffs to jump through silly hoops to prove up a claim in a site where every -- where the company recognizes that its asbestos was present.

So there are differences, and whether the process of presenting and getting a claim approved and paid is more or less stringent, is to a large extent through the eyes of the beholder.

But in a context where the defendant is in the tort system and is hiding, or not voluntarily making public

information about where its products have been located, it's got to be a harder job for the plaintiffs to make their case than in a system where those kind of artificial barriers to compensating sick mesothelioma victims are removed and a job site is made available.

Q. So you agree as the article says, the criteria are generally the same as the debtor's criteria, or more stringent. You're just saying that more claimants might be able to meet them?

A. The -- it is the case that the TDP creates criteria that are, in general, more stringent than those that are in the tort system, at least that's our belief. Whether or not more claimants can meet them, is gonna be fact specific.

But we heard Mr. Rice testify from his personal experience that having this information available, makes it possible for more of his sick and suffering clients to have their claims paid by responsible defendants.

Q. Let's talk -- you mentioned presumed sites. Let's talk about that for a little bit.

Yesterday you expressed the opinion that claimants who rely on presumed sites, don't have to allege exposure to products for which the debtor is responsible?

A. Correct.

Q. But you agree, don't you, that the persons who rely on a presumed site to satisfy the trust's exposure requirement,

would most assuredly be able to prove exposure to the debtor's product if they were required to do so, don't you?
A. I think we -- I think we believe that that's the -- the likely outcome. But from the point of view of the process that we are creating, since we assume that in a perfect world the claimants who were presenting a claim in the tort system against this particular defendant, would have access to all of the information that -- through discovery that the company had with respect to where it had been paying claims, and where its products were located, that the claimant would eventually through that discovery process, find the information, that is the information that underlies the job site list.

So, yes, in that sense we believe that if they work their way through the discovery process, they would discover the very same information that allowed the trusts to create the job site lists in the first place.
Q. I'm getting a copy of your deposition, but do you remember there you didn't say it's likely they would be able to do it. You said that most assuredly they would be able to do that, didn't you?
A. I think that's just what I said.
Q. Okay. So it's reasonable to assume that the people who rely on a presumed site, were exposed, even if your opinion is correct, isn't it?
A. Certainly the trust presumes that they were exposed.

Q. And the sites on a site list are sites where the company's been held liable to asbestos claimants who worked at that site in the past, right?
A. No.
Q. You don't agree with that?
A. Those are sites where the company has been -- those are sites with respect to which the company has been paying claims. Those are sites where the company has acknowledged that it has asbestos-containing materials. It's not the case that that site comprises only sites where the company has been held liable.
Q. Well, looking at your deposition, page 50, line 3.

Q. "How does a particular worksite become an approved site on one of these lists?

A. I don't know the particulars, it's a byproduct of the conversation with the debtor and often defense counsel and others to generate a list of sites that are acknowledged by the company and others, at sites where asbestos was present. But beyond that I have no knowledge of the particulars.

Q. When you say -- acknowledge that asbestos was present, are you referring to the asbestos-containing products for which the debtor is responsible?

A. I don't know. All I know is, we're talking about sites where the company and the other parties

involved in generating site lists, have concluded that there is asbestos present, and the company has been held liable for asbestos victims who worked at that site."

Do you remember testifying to that effect?

A. I do.

Q. We looked at the AC&S TDP. Let me show you the AC&S claim form.

MR. WORF: This is GST 7208.

(Debtors' Exhibit 7208 was marked for identification.)

Q. Now you represented the FCR in the AC&S case, correct?

A. I did.

Q. And currently you have a role in helping to administer the AC&S Trust?

A. I do.

Q. Do you recognize this as the current claim form for the AC&S Trust?

A. I'll have to take your representation that it is. I believe it is.

Q. And this is one of the trusts where you said the claimant doesn't have to allege exposure to products that the debtor's responsible for, if it relies on the presumed site, correct?

A. I'm not sure -- if AC&S has a site list --

Q. Maybe this will help. Look at part seven of the claim form. This is the section on exposure. And if you look at

the series of boxes, and you look at the top right corner of the box, there's a space for an approved site entry, correct?
A. I see that.
Q. Now the claimant or his attorney when they submit this form, has to certify under penalty of perjury that the information in the form is true and correct, correct?
A. Most of them say that. I assume this one does, too.
Q. Well, if you look at the end, you can make sure of that.
A. Right. It does say that. It says, "I hereby certify under penalty of perjury, that the information submitted is accurate and complete."
Q. So turn back to section seven, and we saw that this is the section where if someone was relying on a presumed site, they would -- they would put it here, right?
A. Yes.
Q. Look at the first sentence in the instructions of section seven.
It says, "Provide information below for each location at which the injured party alleges exposure to asbestos or asbestos-containing products for which AC&S had legal responsibility occurred."
Do you see that?
A. I do.
Q. So you would agree that the claimant who relies on a presumed site with the AC&S Trust, if they're in fact signing

that under certification under penalty of perjury truthfully, would have to be alleging that they are exposed to products for which AC&S is responsible, correct?

A. Well, the certification says that the information provided in here is true and correct. The information provided is the site list.

All that's going on is the trust is creating a set of presumptions that it acknowledges that will satisfy the trust that the exposure requirements under the presumed disease categories and claim allowance processes have been satisfied.

And all the claimant is doing who relies on a site list is providing the location; the job the claimant performed at that location; and the dates during which that job was conducted.

Q. Sir, let me just understand what you're saying. You're saying that even in the claim form where the instructions on the claim form say, put here the sites where you are alleging exposure to these products, you are saying that a person who puts a site in the section that says that, and signs that claim form under penalty of perjury, you're saying they are not necessarily alleging that they were exposed to products that that debtor is responsible for?

A. All they're saying is, the information I've provided is accurate. And the information they have provided is, the site where they worked; the date where they worked; and what they

did.

The claimant doesn't necessarily know, and we've heard testimony that the claimant doesn't -- often doesn't know, that that claimant was exposed to that particular product.

Remember, the Joe Rice example we've been talking about. He learns that there may be a claim because the site list itself exists. And that's all the claimant knows in the circumstance we're talking about here.

The claimant -- you can't -- if all the claimant knows is where he worked, when he worked, and what he did, that's all the claimant knows. And that's all he needs to know to sign this.

There's nothing in this that elevates -- that magically gives him more knowledge, or that elevates the standards that he must meet to something more than proving or establishing where he worked, what he did there, and when he did it.

Q. So, sir, you are saying that the trusts are paying people who are not necessarily alleging that they were exposed to products for which the debtor's responsible?

A. The trust is paying people who have provided information that satisfies the trust, that they have been exposed to asbestos that the company's responsible for.

Q. Mr. Patton, these trusts were established to compensate people who were made sick by breathing asbestos from products that these companies are responsible for, correct?

A. Well, and also to compensate people who were made sick by breathing asbestos, and where the company has some liability for that disease. It doesn't have to be the company's product. It doesn't have to be -- and in fact, let's go back to the conspiracy theory.

Even though the TDP says it does not compensate claims on the basis of a conspiracy theory, as I said at the outset, the trust -- the TDP is making it perfectly clear that a claim, even one that doesn't satisfy the presumptive theory, and even a conspiracy claim, must be addressed by the trust, if the claimant presents that claim -- Section 2.2 talks about this -- and then ultimately prevails.

The TDPs provide a mechanism for a claimant that is unhappy with the way the claim has been treated under the presumptive criteria to take the trust through alterative dispute resolution, and ultimately sue the trust in the tort system.

So a claimant who is unhappy with how his or her claim has been addressed under the presumptive criteria, either the expedited review or the individual review processes, and has a conspiracy claim theory, has the right to go all the way to the tort system and sue the trust. And the TDP at Section 2.2, makes it clear that the trust is responsible for those claims.

Remember 524(g) sweeps all claims into the trust, and the

trust must address and respond to all claims. There is nothing here that takes away, and can't take away a claimant's jury trial right.

This is an elaborate settlement mechanism designed to encourage settlements between the claimants and trusts. But when that fails and a settlement can't be reached, there's an exit to the tort system to the claimant and the claim has to be paid, so --

Q. Sir, you don't know of a single time when a claimant has taken a trust to verdict, do you?

A. To verdict; no. Alternative dispute resolution; yes. And the trusts have lost a number of those.

Q. But you don't know any time when a claimant has taken a trust to arbitration, relied on a nonexposure-based theory and has won that arbitration, do you?

A. No, I don't really have any idea what the underlying arbitration disputes are.

Q. And these trusts resolve hundreds of thousands of claims, don't they?

A. Absolutely. The mechanism we created is very successful --

Q. You're talking about a fantasy, aren't you? You're talking about a fantasy, these conspiracy claims. These claims that are going to the tort system, they don't exist, do they?

A. The claimants have, at this point, not brought them. Over the life of these trusts that we're talking about here, particularly the trusts since the 2000s over the five or six years, we haven't seen that kind of litigation yet. And it's not a fantasy.

These -- if they were fantasies, I don't think the definition of asbestos personal injury claim embedded in all the clients, that are designed to sweep every possible claim into these trusts and away from the claimants, are viewed by the defendant -- by the debtor defendants as fantasies. They're terrified of these claims.

Q. Sir, you think it's consistent with your duties as a future claimant's representative, to future individuals who were harmed by products for which these companies were responsible, for these trusts to be paying claims that are not even alleging they're exposed to the debtor's product?

A. If the claimant has an ability to hold the defendant debtor company liable, then the trust has to address that claim.

And if a trust is created that doesn't allow for the trust to address all claims channeled under 524(g), woe be to that debtor who went through a bankruptcy and thought they got a channeling injunction.

So from the point of view of a future claimant's representative, one of my jobs is to make sure that the trust

operates in a manner that is consistent with the requirements of 524(g). And to the extent that the trust fails to do that, fails to address claims that have been channeled to the trust, that's all reviewed claims, that's the degree to which the debtor defendant is exposed to claims and may face claims coming back to the debtor defendant long after confirmation saying, my claim was not channeled. The trust is not addressing the issue, define the universe of claims too narrowly.

Q. We looked at the Federal Mogul TDP. Let's look at that claim form briefly.

A. Am I looking at the Federal Mogul TDP or claim form?

Q. Here's the claim form GST 7209.

(Debtors' Exhibit 7209 was marked for identification.)

BY MR. WORF:

Q. Yesterday you walked us through the Babcock and Wilcox form. And this form looks a lot like that one, correct?

A. Yes.

Q. This is another trust that was handled by the Delaware Claims Processing Facility?

A. I believe it is, yes.

Q. Look at the first page. We're on the very first page. It says, "Filing against a T&N Subfund Entity. Please check whether the specific claim exposure being alleged is against

T&N, Flexitallic or Ferodo. Check only one box below."

And then you see that it has three boxes for T&N exposure, that's Turner Newall, correct?

A. Correct.

Q. Flexitallic exposure and Ferodo exposure?

A. Yes.

Q. Claimant has to check one of those boxes, correct?

A. Yes.

Q. Then it also says above that, "Multiple exposure claims against the T&N Subfund must be filed separately. For example, if you have claims for both T&N and Ferodo exposure, you must submit one complete claim for T&N exposure and a separate claim form for Ferodo exposure." Do you see that?

A. I do.

Q. Now go to the part three. This is very similar to the Babcock form we discussed yesterday.

A. I'm there.

Q. Do you see that in the box it's talking about the site list and it says:

"For T&N Entity exposures. A list of approved T&N entity sites is available on the trust web site. Please reference this list and enter the approved T&N entity site code in item No. 1 below."

And then it says, "The site at which you are alleging exposure to the relevant T&N entity's products or services, is

not on the relevant T&N entity approved site list, provide independent documentation of meaningful and credible evidence of exposure to asbestos-containing products manufactured by the relevant T&N entity, or for which the relevant T&N entity is liable."

Someone who puts an approved site in here, is also alleging that they were exposed to the products for which T&N, Flexitallic, and Ferodo are responsible, correct?

A. The only -- nothing has changed from this form to the last one. The only facts that -- and we allege facts, right?

The only facts that are being alleged by the claimant are, where the claimant worked; what the claimant did; and when the claimant did it at that job site. Those are the only alleged facts. The trust and the TDP establish the rules and presumptions for exposure.

Now, what this is telling the claimant who's filling it out is, there are presumptions you can take advantage of that the trust has created that satisfy the exposure requirements that the trust believes it must satisfy to allow claimants to enjoy one of the presumptive treatments under the TDP.

But the only fact that the claimant is alleging -- there are facts -- of where he or she worked; what he or she did; and when he or she did it. Those are the only facts that the claimant has the control over in the scenario we're talking about.

It's the trust that creates the presumptions. And what the form is telling the claimant is, if you allege the right facts, you can take advantage of the presumption.

Q. This form is under penalty of perjury, signed by the attorney or the claimant, correct?

A. I'm sure it is.

Q. Show you one more section, part seven on page 7. It's labeled, "Company Exposure. Every claimant must submit evidence of exposure to relevant T&N entity asbestos products or activities."

Then it says in part A, "To demonstrate exposure to T&N entity products or activities, check the applicable box below."

And then the first box is the presumed site option, the site in question number one is on the relevant T&N entity approved site list. And the injured party worked there during the appropriate time period.

Now someone who checks that box under those instructions, is alleging exposure to the products that the manufacturer is responsible, correct?

A. The story hasn't changed. The claimant only has control in this hypothetical we're talking about are three facts. And those three facts remain the only three facts that the individual is able to allege. And the trust will tell them that they can -- that that will, from the point of view of the

trust, satisfy the trust that they've demonstrated exposure.

But the only thing the claimant is alleging is, where they worked; what they did; and where they did it.

And by the way, if they're -- if they allege exposure at one of these sites, but identify a job that isn't a job that the trust recognizes as being one that would present an opportunity for that claimant to be exposed to product, the claim doesn't get paid. A claim that is filled out with this information, is not a claim that's guaranteed to be paid.

So a claimant tells the trust where he worked, when he worked, where he did it. The trust on this form says there are presumptions that you can take advantage of with that information if it's sufficient to satisfy the presumptions, and by the way doesn't mean you're going to get paid, because if you give me a job that's inappropriate for that job site, you fail to satisfy the presumptions.

But all the claimant is alleging is, where he worked; when he worked; and what he did.

Q. Mr. Patton, you can't point to any document, can you, that espouses your definition of what it means when someone uses the presumed site, can you?

A. I think this document does.

Q. But you don't know of any document that says, we're a trust, we're here, and we're here to pay anyone who worked at these job sites during these periods. You can't point to any

document that says that, can you?
A. The whole -- yes. The web sites, the whole job site concept is that kind of -- the answer's yes. That document -- this document does what I just said.
Q. By the way, when you were going through the Babcock & Wilcox form yesterday, and you were talking about the equivalent to part three in this Federal Mogul form -- and we can just look at that because it's the same -- but I notice that when you discussed question two there where it asks for date exposure began, and date exposure ended, you didn't say the word exposure, did you?
A. I have no idea.
Q. Well, the record will show, but I don't think you said "exposure".
Now there are many ways that claimants against trusts can meet the exposure requirements in the trust, correct?
A. Yes.
Q. They can do it through affidavits, they can do it through affidavits by co-workers, correct?
A. Correct.
Q. And you have no knowledge about the percentage of claimants who use the presumed site option, instead of these other options, do you?
A. I hope it's very high. It's designed to be as high as possible. And the Babcox site lists 44,000 sites.

Q. But you don't know, do you?
A. I don't know the precise number. I think it's quite high.
Q. And we discussed earlier, the trusts in your opinion, applied settlement criteria that are stricter than or equivalent to the criteria these debtors apply --
A. I think we established -- every time you ask it that way, I argue with you. Every time you quote me where I put the word generally in front of you, I agree with you. The answer is, generally they do.
Q. Well, my question is, do you know any debtor who before its bankruptcy, paid claimants who didn't even allege they were exposed to the debtor's product?
A. Do I know of -- only anecdotally. I believe that does happen.
Q. But you can't name any examples?
A. No, I can't.
Q. Let's move on. An issue in this case is the effect that certain trust distribution procedure provisions have had on Garlock's resolution history.
Now trusts generally keep exposure information submitted to them confidential, correct?
A. That's correct.
Q. And you agree that one reason for that is because asbestos claimants increase their negotiating leverage with

other defendants by keeping that information confidential?
A. I think the -- well, oh, I'm sorry. You're focusing from the claimant's point of view.
I don't believe that's the reason. I think the reason from the point of view -- is that the trusts increase their negotiating leverage with the various plaintiffs.
Q. Let me read from your deposition, page 215, starting at line 14.

> Q. "Do you have any understanding of why an asbestos personal injury claimant would want to keep exposure evidence submitted to the trust confidential?
> A. Do you mean why in the -- well, I think one of the reasons is the same reason that every plaintiff has for keeping information confidential with settling defendants in a multi-party litigation, which is that there's a risk that any of the information that is revealed to one settling party, might affect the negotiating leverage with the remaining parties in litigation in negotiation with those parties with respect to settlement. I believe that's true here, as it is in the court system generally."
> Do you remember --

A. That's true, too. But the reason -- I thought I was answering why the trusts have confidentiality provisions in them from the trust point of view.

Q. Okay. And you're familiar with the provision in trust distribution procedure providing evidence submitted is for the sole benefit of the trust and not for co-defendants in the tort system?
A. That's right.
Q. And you agree that that provision has the purpose of increasing claimant's negotiating leverage against defendants in the tort system, don't you?
A. I don't -- why the plaintiffs want it -- this exchange here that we're having right now requires that we focus specifically on from whose point of view you're asking the question.

We draft the trust agreements with these confidentiality provisions for several reasons. One is to make sure that when a trust is negotiating with plaintiff law firm A, the trust doesn't have to reveal to plaintiff law firm B, information about the negotiations with A.

We also want to make sure from the point of view of the trust, that we don't have to have the trust involved in unnecessary production information and otherwise dragged back into the tort system that we just took the defendant out of.

We also are trying to mirror the system that existed prebankruptcy. Garlock doesn't reveal its settlement history unless it's required to in the context of a verdict.

Now, from the point of view of plaintiffs, the reasons

why they want these provisions are peculiar to their point. I'm sure, from their point of view, it is useful to not reveal their settlements with a defendant or with a trust in the context of the tort system, because it helps them with their negotiations with other defendants.

I think this is an unremarkable proposition.

Q. Well, let's put settlements aside. I'm talking about exposure evidence.

You agree that the sole benefit provision as applied to exposure evidence, has the effect of increasing plaintiff's negotiating leverage against other defendants in the tort system, correct?

A. Your question doesn't really make sense to me because the confidentiality provisions cover every aspect of the information. And we don't pick out -- I mean -- we didn't -- and one wouldn't parse through the information provided by the claimants to decide what's confidential and what's not in the context of the goals that these trusts are pursuing.

So, I don't think in the mind of the drafters of these documents, we went through and looked at every aspect of the information that was going to be provided by the claimants and said, this should be confidential and this shouldn't. The basic proposition is settlement negotiations and all of the details about them are confidential and are kept confidential.

Q. On page 214 of your deposition, line 10.

Q. "The first full paragraph says, evidence submitted to establish proof of AC&S exposure, is for the sole benefit of the trust, not third parties or defendants in the tort system. Do you see that?

A. "I do.

Q. "Could you explain what the purpose of that provision is?

A. "Well, it's just as I said, it's to facilitate the negotiation of settlements.

Q. "How does it facilitate the negotiation of settlements?

A. "Well, if the belief is, imagine if he's a litigation in the tort system. Our belief is, that it's easier to achieve a settlement of claimants, if they have expectation that the basis on which they settle is going to be kept confidential. I think the same is true in the matter of state court or federal court in conventional tort litigation in a multi-party matter.

Q. "When you say that, you're referring to the exposure evidence that the claimant submits to the trust?

A. "I think every aspect of the settlement has the same element that I've just talked about."

Do you remember testifying to that?

A. Sounds like what I just said.

Q. The other part of your opinion yesterday about trust

claims was your point about how, that any moment in time, not all the trust claims that have been submitted to the trust may have been approved or paid; isn't that right?
A. That was part of it, yes.
Q. And you relied on this summary of the Delaware Claims Processing Facility data that was produced in this case. This was prepared by Dr. Peterson's firm?
A. That looks like the same document, yes.
Q. And it showed that of the approximately 54,000 claims that have been submitted by the approximately 11,000 settled Garlock mesothelioma claimants between 1999 and 2010, that 62.6 percent of those claims had been approved. If they been approved, they're going to be paid eventually, correct?
A. Not necessary -- approval doesn't mean that the counterparty ultimately accepts the amount of the approved settlement. So there are -- there are instances where the fight continues. But for this purpose they will probably be paid.
Q. Now let's talk about the approximately 36 percent of the claims that are in the other categories.
Those are in the categories of generally deferred, deficient, disallowed, in review, or withdrawn, correct?
A. That's what the chart says, yes.
Q. And of that 36 percent or so, you don't know the percentage of any of those claims that had exposure

information at the time they were filed, do you?
A. No.
Q. And you don't have that knowledge for any trust, do you?
A. No. Although we could assume that most of the deferred lacked it, and beyond that, we don't know.
Q. Looking just at the deficient column. There's a lot of reasons why trust claims might be deemed deficient, correct?
A. Correct.
Q. Not just exposure, it might be statute of limitations, lack of medical evidence, not being signed, anything like that, correct?
A. There are lots of reasons the claim is deficient and lots of reasons to not pay the claim.
Q. And eventually claims may be supplemented with exposure evidence, correct?
A. That's correct.
Q. You don't know the percentage of any of these that will eventually be supplemented with exposure evidence, do you?
A. That's correct.
Q. In addition, claims that currently have a deferred, deficient or withdrawn status may someday be paid, correct?
A. That's possible. You don't see withdrawn claims coming back, but it's possible. Deferred claims, it is also possible. It's possible all across the board.
Q. You don't know the percentage of any of these claims that

will eventually be paid, do you?
A. Well, nobody knows, since that's going to happen in the future. We do have forecasts that take a stab at it, and certainly less than 100 percent by a wide margin.
Q. But you don't personally know whether on forecasted or other basis what that figure is, do you?
A. I don't know what the figure is, but it's a significant figure.
Q. Let's turn to the ballots. Like I said earlier, this accounts for four of the 22 exposures to trust companies that Dr. Bates estimated.
It's your opinion that individuals or attorneys who cast ballots in asbestos bankruptcy cases are not necessarily certifying the claimants covered by those ballots were exposed to the debtor's products?
A. Well, that's correct. All they are certifying to is that they have a good faith basis to believe that they have a claim or will be able to assert a claim to the trust when it opens its doors.
Q. And you mentioned several times yesterday, your belief that all that is required is a good faith basis. And I have to say when you went through the documents, I didn't see the phrase, "good faith basis" a single time; isn't that correct?
A. Well, it does say under penalty of perjury.
Q. And usually people who sign things under penalty of

perjury, take that certification pretty seriously, don't they?
A. Well, you do understand that the penalty of perjury standard is, you are guilty of perjury if you willfully lied, basically.

So I think -- I think the certification you're relying on is one that simply requires -- we're not supposed to be giving legal opinion here. But if you want a legal opinion, to sign a certification under penalty of perjury under these documents, one needs only to have a good faith basis to believe that they have a claim or will be able to file a claim based on the facts and circumstances of their investigation at the moment their ballot is cast. That's what the law surrounding these certifications entails.

Q. A proof of claim in bankruptcy cases are filed under penalty of perjury, aren't they, in fact?
A. Certainly today they are, yes.
Q. So you think that it will be legitimate for a commercial creditor, for instance, who doesn't know he has a claim in a bankruptcy case, to submit a proof of claim, sign it under penalty of perjury, because he has a belief that he may have such a claim? Is that how bankruptcy cases work?
A. The standard is the same. The facts and circumstances of each claim, of course, dictate what satisfies a good faith basis, and a good faith belief.

So the law with respect to penalty of perjury cases is

rather clear. A commercial creditor who has no commercial relationship with a debtor may know he's lying if he files such a claim. I don't know.
Q. Now, in each of these cases there were hundreds of lawyers participating, weren't they?
A. I'm sorry. Are we talking about bankruptcy cases?
Q. These asbestos bankruptcy cases that you relied on.
A. No, but we can stipulate that these bankruptcy cases often involve many lawyers. But I don't think they all have hundreds of lawyers.
Q. Well, there are many law firms casting these ballots, correct?
A. Oh, participating at that level of casting ballots?
Q. Yes.
A. Sorry. I thought we were talking about, for example, a room like this.
Q. Can you explain why if your interpretation is the right one, not one of these lawyers would have come in at some point and said, hey, this certification needs to contain a good faith statement. Just to be safe, we're signing these things under penalty of perjury, let's put a statement that this is only a good faith belief, and that we're not certifying that this is true and correct, but that this is a good faith belief. Can you explain why this didn't happen?
A. I think they're lawyers, so I assume they understand what

is required for certification, and my interpretation happens to be correct.

Q. Let me read a passage to you from a statement that Mr. Swett made in an important early series of hearings in this case on whether there would be a bar date. It's up on the screen, it says:

"Now the bar date. They say the bar date is mandatory under Rule 3003 which says 'shall'. But they overlook that the rule expressly gives the judge discretion as to when. Of course the creditors have to be identified before they get paid, before they vote, but recognizing the problem of the unfolding carpet that I mentioned, the asbestos bankruptcies have tended to postpone any procedure pursuant to the notion of a bar date, usually until the time of the vote. And many of those cases have treated the ballots as a proof of claim."

Were you familiar with this statement?

A. No.

Q. It's not consistent with your testimony yesterday?

A. I'm sorry, it's not what?

Q. It's not consistent with your testimony yesterday?

A. It's not consistent with your testimony yesterday.

Q. You testified that the ballots are generally not treated as proof of claim?

A. I think I gave rather extensive testimony about the temporary allowance exercise we went through.

Q. But you testified, in your opinion, they are not treated as proof of claim?
A. The -- we pretend that a claim has been filed. We pretend that a claim has been objected to. And we pretend that the court has determined to allow it, after a hearing, in the amount that is prescribed for that kind of claim and the TDP. I believe all of us have testified to. And in that context, the claimant is casting a ballot -- sorry -- the claimant is casting a ballot, is relying on that order that's been entered by the court. And we talked about some of those orders.
Q. Now, one of the principal sources that you relied on for the meaning of ballots, was the depositions of certain law firms taken in this case?
A. I'm sorry. Would you -- no, I don't believe that's right. I did talk about those depositions, and you were asking me during my deposition if I was aware of whether or not anyone out there accepted my interpretation, kind of like the question you just asked me. And I pointed to the deposition transcripts of those other lawyers of examples of situations where we knew that lawyers were filing ballots in situations where, in many cases, they couldn't rule out this particular defendant.
Q. Well, you had a list of reliance materials attached to your report, didn't you?

A. In that sense, yes. That was part of my reliance materials.
Q. You relied on the depositions of the lawyers?
A. That's true.
Q. And those depositions included the depositions of Waters and Kraus; Simmons, Browder; and Motley, Rice?
A. I believe that's right.
MR. WORF: This is GST 7210 and GST 7211.
(Debtors' Exhibit 7210 & 7211 were marked for identification.)
THE WITNESS: I have three documents here.
BY MR. WORF:
Q. Well, there should be two. There's a brief, and then there's a joinder to that brief.
A. Hold on. I have one that has no exhibit number on it at all. Looks like it maybe -- looks like you gave me your copy; am I right? This is the extra one.
Q. Okay. Thanks.
A. Yeah.
Q. Now, were you aware that Garlock, over the past several years, brought a motion in the Delaware and Pennsylvania bankruptcy courts attempting to gain access to Rule 2019 statements that had been filed there?
A. I'm generally aware of that, yes.
Q. And certain law firms opposed that request, didn't they?

A. I am generally aware of that, yes.
Q. And if you look at these briefs, the signatories to those briefs or the parties who were filing those briefs were, among others, Waters and Kraus; Simmons, Browder; and Motley, Rice firm which submitted the joinder that is GST 7211, correct?
A. I only have one brief. But the header -- the front page says it's the brief of -- lists a series of firms, the Kazan Firm; Waters and Kraus Firm; Simmons, Browder; Bergman and others.
Q. Please turn to page 17 of the brief.
And this section says, "Balloting information, not only provides Garlock with the ability to make the argument that its settlement history is an inaccurate basis for estimating its future liability, but does so more reliably. Claimant information obtained from the ballots is a more reliable measure of which claimants might bring claims against an eventual trust. Because the parties identified on 2019 statements, may or may not ever submit their claims. While those that vote also may not ever bring claims, they have at least taken the affirmative step of identifying themselves as creditors."
Then if you skip down, "For this reason, identifying information of the claimants in the balloting, is therefore significantly more probative of which claimants are likely to submit claims to an eventual trust, than that contained in the

2019 statements."

Do you disagree with that statement?

A. No, that makes perfect sense. Certainly each step of the way, one becomes more and more likely to submit a claim. Even submitting a claim to the trust isn't the end of the story. Filing a claim makes one more likely than casting a ballot that one will actually submit a claim for consideration.

But remember, even filing a claim doesn't mean that the claim contains anything more than the name, address and serial number of the claimant.

So each step of the way, a 2019 provides very little information about who will show up and ask the trust for payment. The ballot describes a universe that -- of individuals that is more likely. Those who file a claim represents a universe of individuals that's even more likely to ask the trust for payment.

But only those that have actually completed their claims and sought review, are the ones who are, in the end, standing with a hand out asking for payment from a trust.

Q. Now you weren't here for Dr. Bates' testimony, but he mentioned that one of the reasons why he relied on ballots, is because some of the trusts have not yet emerged from Chapter 11; that's correct, isn't it?

A. Some of the -- some of the companies have not yet emerged from Chapter 11, that's correct.

Q. That includes big companies like Pittsburgh Corning and WR Grace?
A. Yes. Although hopefully, Pittsburgh Corning will be done any minute for now.
Q. So there wouldn't be, for them, any trust claims yet, there would only be ballots?
A. That's true. It often takes some years following confirmation for a trust to open its doors.
Q. Now, I don't want to spend any time reviewing too many documents with the court. We're going to submit the documents ourselves, and you submitted some of the documents yourself. And the Court can read what they say.

But I did want to go over the balloting process in two cases before we conclude.

Now the Owens Corning case is one of the cases where you took their ballots as an example yesterday, correct?
A. Actually I think we skipped Owens Corning.
Q. It was in your book?
A. It was in my book.
Q. You testified it was kind of the same thing?
A. It was substantially the same. That was just for the judge's reference. We didn't walk through those documents.
Q. Right. And you represented the future claimant's representative in that case, correct?
A. That's correct.

Q. And that was one of the biggest asbestos bankruptcy cases, right?
A. You asked me that in my deposition. I know it was big and it -- I -- I'll take your representation it was one of the biggest.
Q. Now there were two solicitations in that case, correct, there was one in 2003 and one in 2006?
A. You asked me that also by deposition, I said I thought there was only one. We were checking back, I'm not sure there were two. But we spent just a little bit of time trying to verify that and we couldn't.
Q. Okay. Well, we'll look at some transcripts. There was at least a discussion of balloting in 2003. But let's look at the transcript.
Apparently you don't recall the ballots were proposed in 2003, but -- so you wouldn't be aware that the Commercial Creditors Committee objected to the ballots, because they did not think that the exposure certification was strong enough? You don't remember that?
A. I don't remember that.
Q. Let me refresh you with the motion. I'm going to go ahead and give you the transcript we'll talk about, too. It's -- the exhibit is GST 7214. And the transcript we're going to look at is GST 2715.
(Debtors' Exhibits No. 7214 & 7215 were marked for

identification.)
BY MR. WORF:
Q. Now, if you look at page 21 of the Commercial Creditor's motion.
A. I'm sorry. Just one moment, please.
Q. Do you see they were --
A. I'm sorry. I just want to make sure I have some --
Q. Sure.
A. I'm sorry. I'm on the motion? I'm sorry. The objection?
Q. That's right, the motion.
A. I was just -- I was --
Q. -- or the objection. It might be the objection rather than the motion.
A. Okay.
Q. But look at page 21.
A. Yes.
Q. And you see there they were objecting that the exposure certification was not strong enough?
A. Are you talking about (g) where it says "factors effecting value"? Hang on here. Which paragraph, 34?
Q. It's paragraph 48.
A. I'm sorry. I was on page 21.
Q. Yeah, page 21. I'm looking at the bottom page number.
A. I see page 21. And my page 21 has paragraphs 34, 35 and

36 on it. Am I in the wrong document?

MR. WEHNER: I think you got a couple documents stuck together here.

MR. WORF: Oh really?

THE WITNESS: There's another document.

BY MR. WORF:

Q. I'm sorry. It's the attachment to their objection. It's Exhibit A.

A. And this is the attachment to the objection is the motion of the -- this is -- okay. The attachment to the objection is the motion of the Official Committee of Unsecured Creditors for an order establishing a bar date and filing proofs of claim.

So if I understand what's going on here, they've filed an objection to the debtor's renewed motion for an order establishing procedures for solicitation.

And in that -- in the context of that objection, they're attaching a motion for the establishment of a bar date. Which I assume -- if what they're doing is bringing back up an earlier filed pleading or not.

But it's in that -- in that motion which is an exhibit to the objection that you're asking me to focus on paragraph 48. Is that where you want me to be?

Q. That's right. But actually let's just go to the transcript. I think it will make clear what was at issue in

the case.
A. Okay.
Q. Look at page 86 of the transcript.
A. Yes.
Q. Now Mr. Bernick, do you remember that he was counsel for the debtor in that case?
A. I do.
Q. And the debtors are the ones that you said would have a strong interest in making sure the vote was as broad as the law allowed?
A. They certainly have an economic interest in that outcome.
Q. And if you look at this page, the transcript says -- and this is Mr. Pernick's statement.
"The summary of the voting procedures requested in the motion is as follows:
"First, each PI claimant that is entitled to vote in a specified value, based upon disease level, there are eight disease levels in the voting procedure motion."
And then if you skip to the bottom of the page, he says:
"The disease levels are specifically only valid for voting purposes, and each holder has to certify the following:
"First, that they have been exposed to asbestos-containing product manufactured or distributed by one of the debtors, and with respect to which one of the debtor's has a legal liability."

Do you see that?
A. I do.
Q. Now turn to page 110. This is Mr. Bernick speaking again. And he says, "Your Honor, a couple of things. First, on the issue of, I guess, product ID and injury, I think the committee continues to overlook the requirement in the voting procedures that the claimant certify that she or he has meaningful and credible exposure with respect to which the debtor has legal liability, and that certification should be enough."
Do you see that?
A. I do.
Q. Now turn to page 117. Do you remember that Mr. Harris was counsel for the Unsecured Creditor's Committee?
A. I'll take your word for it.
Q. And he says, "Your Honor, I wanted to raise two things on that issue. One, on the product ID, the certification is that I was exposed to a product. That is not sufficient under state law. Anybody in the United States only, over 30 years old, can certify that I was probably exposed to Kilo" -- it probably means Kaylo, right?
A. Right.
Q. It says "Kilo" in the transcript?
A. Right, should be Kaylo.
Q. "If they've been in a garage.

"THE COURT: No, I think the certification goes beyond that. Mr. Bernick read it earlier.

"Would you read it again, Mr. Bernick, please?

"MR. PERNICK: The claimant has to certify that he or she has meaningful and credible exposure with respect to which the debtor has legal liability."

Do you see that?

A. I do.

Q. Finally turn to page 121. And this is the court speaking, and I have it on the slide as well.

The Court says, "I think you're right. I think this certification is broadly enough worded and yet specific enough that it links Owens Corning's product to the exposure, and for purposes of filing a claim, that's all that's necessary."

A. That's right.

Q. Do you see that?

A. I do.

Q. Given all this, don't you agree that in that case, and at that time, the parties understood that the claimants were going to have to certify that they were exposed to an Owens Corning product?

A. Of course, we just talked about what certification means, a good faith basis. The judge was looking for a link. And by the way, at the end of this transcript, there's a discussion about 524(g)(2)(B)(ii)(IV)(bb), and the need to have that vote

counted as well. And the judge recognized that you need to be able to allow parties who don't even check a disease category at all to the vote. But the ballot --

Q. But if he did check it -- okay. I'm sorry.

A. The balloting process is one that was devised to address a variety of concerns.

But with respect to certification of exposure, we know we're not certifying we have proof of legal liability, because that means a verdict. That's the only thing that establishes, unequivocally, that there's legal liability.

The party certifying, is certifying that they've got a good faith basis to believe they have exposure; no more and no less. And the judge is looking for a link between the claim and the company. Not -- not a verdict, not ironclad proof. Not certain knowledge. Just enough to connect that individual with that claimant, and what that needs -- what the claimant needs is a good faith basis to believe they have exposure under the circumstances they find themselves in.

Q. Now, do you remember in your deposition I asked you about the 2003 Pittsburgh Corning solicitation and we went over the ballots?

A. I do, yes. Yes, I do.

Q. I don't think we need to spend time going over the ballots themselves, but there is a couple transcripts I would like to look at there as well before we complete it.

These are two more transcripts from Pittsburgh Corning GST 7218 and GST 7219.

(Debtors' Exhibits No. 7217, 7218 & 7219 were marked for identification.)

MR. WORF: This is exhibit GST 7217.

Q. If you look at the exhibit I just handed you.

A. Yes.

Q. Look at pages 9 and 10.

A. Yes.

Q. And does that refresh your recollection that in that case the insurers objected to the ballot because they did not think the exposure certification was strong enough?

A. This doesn't refresh my recollection, it's too far back. But I'm not at all surprised by this.

Q. They did that from time to time, correct?

A. Yes, they did.

Q. Now, look at the October 23rd, 2003 transcript.

A. I have it.

Q. This was just a few days before the Owens Corning hearing we discussed a moment ago, which was also October 2003?

A. Before the Owens Corning hearing.

Q. Yeah.

A. I'll take your word for it.

Q. Look at page 144, Mr. Ziegler. That was -- he was the attorney for the debtor Pittsburgh Corning?

A. Hm-hmm. I'm sorry, yes.
Q. He says here, "Really the final point that I wanted to make on this, is that the asbestos ballots I think very clearly indicate, that whoever is signing the ballot, whether it be the attorney or the individual, is making a statement under -- under penalty of perjury, that the claimants involved have had the requisite exposure limits, or exposure to the products involved, as required in the plan and disclosure statement."
Do you see that?
A. I do.
Q. Now go to the November 25th transcript. I believe you were present at this hearing, weren't you?
A. I was, according to the cover sheet.
Q. And look at page 39. This is Mr. Ziegler talking again.
A. I'm on 39.
Q. He says, "The form of ballots that we have provided, we have crafted, will include all the information that would normally go into a proof of claim. And it, in fact, in many cases, it requires certifications" -- I think it's missing the word "more", but it says, "it requires certifications than a normal proof of claim form would require. Because we require specific certifications as to exposure and disease level. In fact, the ballots will be in effect used as a de facto claim because we will, once the ballots have been tabulated, we

anticipate that they would be sent to the trust, and the trust will use those ballots for determining the order of processing the claims in the trust."

Do you see that?

A. I do.

Q. Do you disagree with any of that?

A. That he thinks that's going to happen? I don't disagree that he thinks that's what's going to happen.

Q. But you disagree to the statement that he made to the court?

A. Well, the last sentence strikes me as foolishness. But with respect to what he's asking for from a point of view of a ballot and information on a proof of claim, the information they need to file a proof of claim and information that is minimal, and the information that you have that's required of you on a ballot is quite minimal. So in that sense he said nothing wrong.

The one thing that I do find worth a little bit of explanation is, his discussion here about in effect use of a de facto proof of claim. This is a shorthand allusion to this discussion I was having earlier about trying to concoct procedure to solicit votes from entities that haven't filed proofs of claim. It's an interesting problem under 1126, 524(g)(2)(B)(ii)(IV)(bb) makes it even more complicated.

Q. Were you aware that all but one of the 23 balloting names

that Dr. Bates relied on took place after these two disputes in Owens Corning and Pittsburgh Corning that we talked about?
A. I'll take your word for it. It was probably also before -- but before Judge Fitzgerald's ruling in this very case about fraudulent ballots about two and a half months ago where she in essence agreed with my opinion.
Q. Well, you would agree, wouldn't you, that if in the subsequent ballotings, if there had been a problem with the exposure certification, the insurers and commercial creditors likely would have objected just like they did here, correct?
A. Well, commercial creditors are only germane to a few -- in a few of these cases where you've got large groups of bond holders.
Q. Right. If they were in the case --
A. -- that's relatively rare in the context of all these cases.

The insurers -- the insurance parties -- this is a tad pejorative, not much -- they will latch on to anything they can to further their goals of lowering the amount and lengthening the date of any amount that they have to pay.

So, the insurers fought about balloting a great deal. They were very worried the idea of temporary allowance was going to create a problem for them, so they get credit for -- to the degree to which we made it clear -- that this exercise is just an exercise in trying to gather votes and is not a

claiming exercise.
Q. But the insurers, they were in a lot of cases, weren't they?
A. Yes, they were. And their interests are quite parochial.
Q. Just a few questions on your history. Your firm is representing future claimants in many of the large asbestos bankruptcy cases, correct?
A. That's correct.
Q. And you currently represent future claimants in the Bondex case and the Yarway case that are in Delaware?
A. I actually am the future claimant's representative --
Q. Okay.
A. -- in Yarway. I represent the future claimant's representative in Bondex.
Q. And your firm may well represent future claimants in asbestos bankruptcy cases in the future, correct?
A. That's correct. Well, I hope so.
Q. And future claimant representatives are often selected by the Asbestos Claimant's Committee, correct?
A. Often, sometimes it's the debtor, and sometimes it's other parties. In Fuller, for example, I selected future claimant's representative and I represented the debtor.
Q. The Asbestos Claimant's Committee are often represented by Caplin and Drysdale?
A. That's true.

Q. And they retained you here?
A. Yes, they did.
Q. You've been on the same side as Caplin and Drysdale when it was representing current asbestos claimants in at least a dozen bankruptcy cases, correct?
A. We -- as I testified earlier, once the trust is created, we are more enemies than friends sometimes. During the course of the case where we're fighting with other parties who are seeking a share of the estate, the future claimants representative and the present claimants are allied on many if not most of the issues.
Q. You've never been adverse to Caplin and Drysdale in a litigated dispute, have you?
A. I don't -- you asked me that in my deposition, I don't think we have. I don't think -- well, we have filed pleadings that put us at odds. And so in a bankruptcy context we have taken positions that are contrary to each other and had arguments about that with each other, from time to time. So not -- we have not litigated in an adversary proceeding against each other.
Q. Now many of the future claimants whom you've represented in previous, current, and may represent in future cases, are going to be future claimants in this case too, correct?
A. Are we talking about the hypothetical class of all future asbestos victims?

Q. That's right.
A. I think -- I think we expect that there is inevitably a significant amount of overlap, one case to the other, but it's not perfect.
Q. So in some real sense, your past and current clients, your vicarious clients are future claimants in this very case, aren't they?
A. This is getting pretty metaphysical.
So you're asking about somebody who -- you're talking about somebody who has manifested a disease --
Q. Well, let's not get technical. I'm just saying that when you represented future claimants in previous cases and in current cases, there's likely a significant amount of overlap with the constituency that Mr. Grier and Mr. Guy represent in this case?
A. And if you stop at a moment in time and look forward across all of the cases, one can expect that there will be claimants filing in multiple cases.
Based on that assumption, one can assume that a future claimant's representative in case A, may be representing a number of future claimants who will file in a trust created in trust B.
And therefore, that class overlaps with the class represented by the future claimant's representative in case B.
Q. I just have one brief set of questions remaining for you,

Mr. Patton, and we'll get you off the stand.

Your opinion in this matter is based on, among other things, your general observations about the nature of 524(g), and the nature of bankruptcy cases that involve future claimants, correct?

A. That's true.

Q. Let's talk about a case where you represented future claimants that did not involve asbestos.

You represented the future claimants representatives in Met-Coil bankruptcy case?

A. I did.

Q. And the tort that was alleged in that case was personal injury claims based on trichloroethylene exposure?

A. It's a ground water contaminant called trichloroethylene. And we were representing the potential future victims of exposure to that product.

Q. And the ultimate resolution of that case was the establishment of a trust and a channeling injunction, correct?

A. That's correct.

Q. That was under Section 105, instead of 524(g) because 524(g) only applies to asbestos, correct?

A. 524(g) only applies to asbestos, that's correct.

Q. So the source of authority in that case was 105. There's a 105 channeling injunction?

A. That was one of the sources, yes.

Q. Now in that case you represented Mr. Green as the future claimant's representative, correct?
A. That's correct.
Q. And Mr. Green engaged experts to determine the amount of funding that was to go in the trust?
A. Yes.
Q. And he engaged experts to analyze the level of exposure in the ground water contaminant, correct?
A. Yes.
Q. And he engaged doctors and epidemiologists to analyze the potential health effects of that exposure?
A. That's correct.
Q. And he engaged econometricians to estimate the value of the claims, correct?
A. That's correct.
Q. Now in that case your experts concluded, didn't they, that there was not a basis for establishing a nexus between the exposure levels and the diseases that were alleged, correct?
A. That's right. They believed that the level of ground water contaminant was below or likely below a level that would trigger the kinds of diseases that trichloroethylene can trigger.
Q. And you agree that Met-Coil should have won all the cases in the tort system, correct?

A. Well, if those experts were the ones who prevailed in the tort system, yes. One of the problems that Met-Coil had was that they -- they had a handful of personal injury lawsuits pending. They had one large, I can't remember whether it was a settlement or a verdict -- but it was a large $6 million -- I thought it was a verdict -- against them. They had zero -- and they had a lot of dollars paid out to property damage claims because of the contaminated wells.

This was a ground water contamination event that was caused by a plume of trichloroethylene moving through the groundwater in the neighborhood that was near the plant. The company had addressed a lot of the property damage claims caused by the contaminated wells, but it was now beginning to get a number of personal injury claims, and had had one large claimant for this company was a $6 million claimant. It was probably large by anybody's standards. But it was huge in the context of this case. And it was a small company. They were trying to figure out how to address this plume of tort claims that it saw coming down the road.

Q. And there were future claimants in that case, correct?

A. Well, we believed there probably were. But we had no history other than this one tort claim. We had no ability to use the kinds of data that are available here, to determine what the future would look like.

So we had to engage all of these experts that you just

identified to try to determine how to -- how do you resolve a problem where the -- the threat of liability was real, the science was somewhat tenuous, and the company was at risk of exhausting itself satisfying the claims on the immediate horizon and being unable to satisfy future claims.

And we borrowed a page from the Manville case and relied on 105 and began building a structure based on what our scientists and doctors and econometricians told us, to create a trust that would be able to stand and respond to those who came in the future. It was a very complicated problem, because we had no history to rely on, which is what we rely on in these cases. Because we have years of experience in the tort system in a case like Garlock.

Q. Now you agree that the point of that case was to create a hundred-cent trust?

A. You know, if I said that in my deposition, I don't think we did. I think -- cause I -- when you were asking me this in my deposition, I was trying to recall how we approached that problem.

I think in the end we concluded that -- I think in the end we concluded that there wasn't enough value in Met-Coil and its potential veil-piercing and other causes of action against its affiliates to raise enough money to pay claims at 100 cents on the dollar.

I took a quick look at the disclosure statements and the

affidavits in that case and tried to get back to the source of that question. So I'm not sure I was right in my deposition when I said that.

Q. But you said that in your deposition, right?

A. And I believe what happened was, we arrived at a value for the company that -- this Met-Coil company. We negotiated with a parent who had some desire to hang on to it because it was continuing to make product, and had the parent purchase the company back from the trust. It happened at confirmation.

And they provided value, in addition to the value of the company, to satisfy other causes of action that we identified that the state might have against the parent. And through those payments earned its protection under a channeling injunction. I think that's what happened.

Q. But the fact that the claimants -- it was difficult for them to prove causation in forming the funding of the trust, correct?

MR. GUY: Your Honor, I'm not sure what this has to do with an asbestos case. We do need to get the witnesses on.

MR. WORF: I've got about two more questions.

THE COURT: Let's go ahead.

BY MR. WORF:

Q. The fact that the claimants couldn't -- or had trouble proving causation informed funding the trust, correct?

A. I think that was another thing I said in my deposition.

I think since we -- since we were forcing a buyout of the company at full value, and buying out the ancillary causes of action could be brought against the estate, I think we ended up with a cents on the dollar claim.

And the funding of the trust in the end, I believe, was dictated more by how much we collectively -- we on the one hand and the parent company on the other thought the Met-Coil entity was worth, and had them pay that, plus what we ultimately negotiated as a fair resolution of veil piercing and alter-ego theories, so --

Q. Let me --

A. So I think that the -- the original plan when we started the exercise, was to attempt to create 100 percent payout to creditors, as a model that can work in certain cases.

But in the end I believe we concluded that the values of the assets were too low and the values of the claims were too high.

Q. But you testified in your deposition, correct, that the fact that claimants had trouble proving causation did inform the funding, correct?

A. I think I was wrong. I think that was how we started out our approach. We thought that this was going to be the kind of case that we could resolve through 100 percent plan. But the claim values were too high.

MR. WORF: Thank you, Mr. Patton.

THE COURT: All right. Mr. Wehner.

MR. WEHNER: A couple questions, Your Honor.

REDIRECT EXAMINATION

BY MR. WEHNER:

Q. Mr. Patton, Mr. Worf brought up 2019 forms. Does the filing of the 2019 form in an asbestos bankruptcy constitute the assertion that the filer possess proof of exposure to an asbestos-containing product to which an asbestos debtor has liability?

A. No.

Q. Why is that?

A. Well, the 2019 form -- focus on the old 2019 form. The old 2019 form is designed to inform the court and other parties of the identity of entities that the lawyer's representing when a lawyer represents multiple entities. It doesn't tell anybody anything about whether those entities are going to file a claim and participate in any particular way in the case.

Q. Did anything that Mr. Worf brought to your attention change your opinion that Dr. Bates cannot assume that a claimant who casts a ballot in an asbestos bankruptcy knows with any certainty that he or she was exposed to the product of an asbestos debtor?

A. No. There's nothing that suggests you could elevate a ballot to something that belongs side by side with -- in a

verdict.
Q. Anything Mr. Worf brought to your attention change your opinion that Dr. Bates cannot assume that a claimant casts a ballot in asbestos bankruptcies gathered all the proof and evidence of the claimant's exposure he or she would have needed to prevail against the asbestos debtor pre-petition?
A. No. Again, nothing that suggests that a ballot can be elevated to stand side by side with other types of claims as a verdict.
Q. Anything Mr. Worf brought up change your opinion that Dr. Bates cannot assume that a person who files a claim with an asbestos trust, knows he or she was exposed to the product for which debtor was -- that formed the trust was responsible, or has gathered all the proof and evidence of his or her exposure they would need to prevail against the debtor to form the trust?
A. No.
MR. WEHNER: Your Honor, we move in ACC 456, that's the asbestos ballot -- the Armstrong ballot materials.
ACC 641b, that's the Armstrong plan.
ACC 480, that's the Pittsburgh Corning ballot materials.
ACC 641c, that's the PCC plan.
And finally, we would move in ACC 641f, that's the B&W plan.

MR. WORF: No objection.

THE COURT: They're admitted.

(ACC Exhibits No. 456, 480, 641b, 641c and 641f were received into evidence.)

MR. WORF: Your Honor, if it's okay with you, I'll determine which exhibits I used and admit those later.

THE COURT: All right. Why don't we take a break before we start the next witness and come back at, let's say five minutes till 11:00.

(A brief recess was taken in the proceedings at 10:45 a.m; court resumed at 10:59 a.m.)

MR. KRISKO: Your Honor, before we get started. On Tuesday, Mr. Hanly was called to the stand and you will recall that his examination needed to be interrupted to accommodate his schedule.

The committee displayed a new opinion that they proposed for him to offer that was not disclosed in his expert report. It was listed on a demonstrative as opinion No. 4, which was a commentary on the explanation for Garlock's positive trial record. That was not discussed in his report. It was not the subject of his deposition.

When Mr. Turlick took the stand last week, the committee likewise objected to a discussion of 2019 statements and the Court sustained an objection that precluded opinion testimony on those.

We would ask that the Court likewise preclude Mr. Hanly from testifying about Garlock's trial record, or any explanation for Garlock's trial record.

MR. SWETT: Your Honor, if I may.

THE COURT: Yes.

MR. SWETT: That demonstrative is merely explanatory of the opinion that he fully unfolded in his report. He was deposed. He testified upon deposition that Turner Newall, under his representation, decided early on that it couldn't stand a one percent loss rate at trial.

That bullet point on the demonstrative is simply signaling to the other side and to the Court, that he is going to explain that on the stand. It is not a new opinion. It is simply a demonstrative, explanatory of the opinions he's already fully expressed.

It's very different than the situation where Mr. Turlick comes to talk about 2019 statements, a specific new subject, without having touched upon it in his report.

MR. KRISKO: Your Honor, I've combed through Mr. Hanly's report. There's no mention of Garlock's trial record or any explanation of Garlock's exemplary trial record disclosed in that report. Had he done so, it would have been the subject of a deposition. We could have probed the basis for that opinion to test its reliability and usefulness for the Court.

THE COURT: Well, let's stay away from his opinion about that. You can go on with the opinion about the other things on the demonstrative.

Mr. Guy.

MR. GUY: Yes, Your Honor. Just before we start with Mr. Hanly, I want to give the Court a sense of where we are going, where we need to be.

We are hoping that Mr. Hanly will finish promptly and then we'll move to Dr. Peterson. We have every expectation that he'll be done today and we're hoping to get Dr. Rabinovitz on and complete her tomorrow with Dr. Heckman, Professor Heckman who is Coltec's witness.

Assuming we can do all of that, then I would like us on Friday to maybe revisit the need, after discussions with all parties, for the additional day. Because it may be that on the Monday they will have enough time.

But that's just to give the Court a sense of where we are going. We can address that when we get there.

Thank you, Your Honor.

THE COURT: I would like to break for lunch at 12:30, so I can meet a friend for lunch at 12:35, if that's all right we can do that. Let's try to do that. Okay.

PAUL HANLY,

Being previously sworn, was examined and testified as follows:

CONTINUED DIRECT EXAMINATION

BY MR. PHILLIPS:

MR. PHILLIPS: Good morning, Your Honor.

Todd Phillips on behalf of the committee.

Q. Good morning, Mr. Hanly.

A. Good morning.

Q. When you were here on Tuesday, you talked about asbestos litigation in the '80s, '90s and 2000s, and you discussed opinions you have -- several opinions you have; is that right?

A. Correct.

Q. Very briefly I'll recap those opinions.

First one, in the tort system of the '80s and '90s, many defendants were once peripheral free riding on the defense and settlement efforts of the lead defendants.

When those lead defendants went bankrupt, others were brought to center stage, and there was no returning to the periphery.

Juries were focused on doing justice between the parties present in the courtroom.

A defendant responsible for widely sold asbestos products cannot prevail in the long term by blaming others.

I would like to talk briefly now about how in the 1990s plaintiffs did not usually focus their cases on gasket products.

A. Yes.

Q. You described -- can you explain to the court how you

reached that conclusion?
A. Well, again, I was there in the '90s and before, and it was not until the late 1990s, second half of the 1990s when I observed that plaintiff's lawyers began to develop the case, the medical, scientific case against gasket manufacturers such as Flexitallic, Garlock, John Crane and others.

The reason in my judgment, was because the cases against the thermal insulation manufacturers were highly refined, highly advanced. There were still a substantial number of large thermal insulation manufacturers in the tort system. And those companies really were the low hanging fruit, which is to say that many of them had a treasure trove of bad documents, or documents at least that were alleged to be bad by the plaintiff's bar. That many of these products contained amphibole asbestos, chrysolite or amosite. And the case was just much easier to try against those defendants, such that defendants such as Flexitallic continued to enjoy a low profile up until, as I said, the latter half of the 1990s.
Q. Now I think you mentioned this on Tuesday about how plaintiff started working up cases.

How were the cases worked up by plaintiffs?
A. Do you mean against the gasket manufacturers?
Q. Correct.
A. Well, as some of the large thermal insulation manufacturers either went into bankruptcy, such as companies

like Celotex and Eagle-Picher, the plaintiff's bar focused on the gasket manufacturers and began to focus on the two principal defenses for most of the gasket manufacturers. Those were of course, as has been testified to in this court, the chrysotile defense which posits that exposure to pure chrysotile cannot cause mesothelioma. And these so-called encapsulation defense, or low-dose defense, which is that these products, gasket products simply cannot give off enough respirable asbestos fibers to cause disease.

And what the plaintiffs did on the chrysotile defense was essentially develop the medical literature, work up epidemiologists to re-evaluate a lot of data that went back decades concerning the incidence of mesothelioma in various cohorts, and attempt to disprove that defense of chrysotile being incapable of causing a mesothelioma.

On the encapsulation or low-dose side, the end of the 1990s was marked by the emergence of Dr. Longo, who I believe was a witness in this courtroom, who began to do his so-called Tyndall light experiments using gasket products and trying to show on videotape in a very graphic and to my mind frighting way that these products when manipulated gave off large quantities of dust.

Now whether that dust was asbestos or not is a matter of considerable debate.

But those were the two ways that the case -- principal

ways that the cases against gasket manufacturers such as Flexitallic and Garlock got worked up if you will by the plaintiff's bar.

Q. Let's move on to the last opinion we have on the board.

Trial is never a viable claims management strategy for Garlock.

How did you reach that conclusion?

A. Again, as I testified, I was there from 1981 on. I was there at the time of the Manville bankruptcy and all the way through all the other bankruptcies, other than Garlock's bankruptcy. And this was tried over, and over, and over, and over, again, and failed over, and over, and over, again.

If you begin with Johns-Manville, it's interesting to know that actually the asbestos personal injury litigation did not really get going in sort of full force until the mid-1970s. Yet Manville filed for bankruptcy in 1982, essentially six or so years after the litigation got going. That's a very short time when you consider how long Garlock, for example, or Flexitallic or Turner Newall remained in the tort system -- 20-plus years, 30 years, I guess, for Garlock.

The reason that Manville went into bankruptcy was that they had a scorched-earth policy of trying case, after case, after case, after case. And so in very short order they simply couldn't sustain the volume of losses, the dollar magnitude of losses. And in approximately six years after the

litigation got going full force, they're in bankruptcy.

This repeated itself over the years with Fibreboard, Eagle-Picher, Celotex, all the companies that have been testified to at length here in this courtroom.

And this occurred -- I think it's important for the court to note -- notwithstanding that the lawyers representing these defendants were the finest litigators in the United States and that includes Garlock. Garlock's counsel were superb. Johns-Manville counsel was superb.

I believe that asbestos litigators are the finest civil litigators in the country, in any area of practice. And yet trying cases over, and over, again resulted in all of these bankruptcies. So it just doesn't work. And we were forced into that posture at the very end before our bankruptcy, and it didn't work for us.

Q. Did you consider what percentage of cases your clients could afford to lose?

A. Less than one percent. The risk was simply too large, as evidenced by what happened in the 2000/2001 period when we were forced to try some cases. Flexitallic tried three or four, five cases that were large jury verdicts in California.

Of course there was the Wells case in Beaumont. And Turner Newall itself suffered a very large verdict in early spring of 2001.

Q. So did Turner Newall and Flexitallic, Federal Mogul ever

consider a trial strategy?
A. Yes, what happened was that as these companies, the larger companies were going into bankruptcy, as our costs were mounting, as our indemnity payments were mounting, both in number and in dollar amount, the board of Federal Mogul, which by then 2000, owned Turner Newall, embarked on a project which involved the engagement of NERA, which is, I believe, National Economic Research Associates. It's basically an econometrics firm.

NERA took the existing data that Federal Mogul T&N had concerning its asbestos claims, and essentially enhanced that data, added to that data with all kinds of additional information about co-defendants and so on.

It sounded -- I was in the courtroom for testimony of Dr. Bates' testimony, and the testimony of the gentleman with the Hispanic surname, whose name I can't recall, it sounded much like they're so-called, "enhanced analytical database". So that's what Turner Newall and Federal Mogul did.

MR. KRISKO: Your Honor, I hate to interrupt Mr. Hanly, but this information that he seems to be relying on was not identified as a source of reliance material to support his opinion.

THE COURT: We'll let him go ahead.

BY MR. PHILLIPS:
Q. What was the effect of that strategy?

A. Well, all of this data was assembled and conclusions -- recommendations were made -- not by me I would add, because I didn't believe this was a useful exercise -- that basically attempted to cap the amounts of money that Turner Newall would pay. And if the plaintiffs would not accept those amounts, lines would be drawn in the sand and we would go to trial.

This was essentially the strategy that Federal Mogul, Turner Newall adopted for a very short period of time. The result of that is that the Wells case got tried rather than being settled. The Hoskins case, about which I testified in my deposition got tried rather than being settled. And the other Flexitallic cases got tried rather than being settled, all resulting in multi-million dollar verdicts, and becoming part of the precipitating events presiding the bankruptcy of Federal Mogul and Turner Newall.

BY MR. PHILLIPS:

Q. You mentioned the bankruptcies. Did Garlock have any involvement in those bankruptcies?

A. Well, yes. I believe it was Mr. Magee who testified about the fact that in the Federal Mogul/Turner Newall bankruptcy, Garlock petitioned the court, I don't know the bankruptcy term, but basically asking to enter the bankruptcy and receive, I guess, the benefit of the automatic stay on the basis that Garlock claimed that it had asserted cross-claims against Turner Newall entities in the underlying litigation.

That attempt was not successful.
Q. Thank you, Mr. Hanly.
THE COURT: Mr. Guy, do you have any Cross?
MR. GUY: No, sir.
THE COURT: Mr. Krisko?
MR. KRISKO: Thank you, Your Honor.
CROSS EXAMINATION
BY MR. KRISKO:
Q. Mr. Hanly, we discussed on Tuesday that you ended your asbestos litigation practice by 2002; is that correct?
A. The day-to-day involvement in handling cases, that's true.
Q. And you have not represented an asbestos litigation client since 2002; is that correct?
A. The end of 2002, as I said, Mr. Krisko. I'm not entirely sure, it could have been early 2003 with respect to the Abex Company or whatever it was named.
Q. Okay. The Abex Company, that was a former affiliate of Federal Mogul's; is that right -- or a non-bankrupt affiliate of Federal Mogul?
A. Yes, it was a very complicated relationship that I could not possibly articulate. But the bottom line is that it did not enjoy the benefit of the automatic stay. It did not itself file for bankruptcy.
Q. In any event, that was the last client that you

represented in connection with asbestos litigation; is that right?
A. Yes, that's correct.
Q. And since the Abex representation ended in 2002 -- and I guess now you're saying perhaps early 2003 -- you have not in any respect supervised attorneys in asbestos trials?
A. Oh, that's true.
Q. You have not been involved in any asbestos trials?
A. That's true.
Q. You have not given any advice to any asbestos defendants since that time?
A. That's --
Q. In connection with an asbestos litigation case?
A. I beg your pardon, sir?
Q. You have not given any advice to any asbestos defendants in connection with your representation of them in an asbestos litigation case?
A. That's not entirely true, but it's been de minimus and very occasional.
Q. Now you described with Mr. Phillips your current practice is a plaintiff's mass tort litigation practice; is that right?
A. That's most of what I do. I still do defend some defendants.
Q. Okay. But that is the bulk or majority of your practice?
A. Pays the bills.

Q. Okay. Now that practice, am I correct, overlaps with the practices of some of the firms that sit on the asbestos claimant's committee in this case?
A. Yes, that's true.
Q. And in fact, you do work with some of those firms on litigation from time to time; is that correct?
A. That's true.
Q. You have worked with the Simmons law firm?
A. That's true.
Q. You worked with the Motley Rice law firm?
A. That's true.
Q. You also worked with Weitz and Luxenberg law firm in that practice?
A. That's true. And to be clear for the court, this is all non-asbestos to date.
Q. Now, also when you spoke with Mr. Phillips on Tuesday, you described for the court your former role as the national counsel for Turner Newall; is that right?
A. That's correct.
Q. And I think you indicated that as national counsel you were involved in strategy decisions, settlements and had oversights of trial, is that a fair description?
A. That's fair. There certainly were other aspects. I would say I did everything that Mr. Turlick testified he did, and then some, because I -- as I testified, I had sort of a

general counsel role as well.
Q. Okay. So you did attend some trials?
A. Yes, sir.
Q. I think we established in voir dire on Tuesday that there were 10 or fewer verdicts that T&N faced or suffered, I guess, during your time, and you were at trial in two or three of those cases?
A. I was at trial in two or three of those cases at verdict, that's correct. But as I also testified, which I testified in the Federal Mogul proceeding, my best recollection is that I participated actively in between 25 and 40 trials. But obviously from the testimony I just gave, the vast majority of those cases never went to jury verdict. They either were settled or they were Rule 50 motions or the like in the course of the trial.
Q. Okay. And you talked also with Mr. Phillips about T&N's membership in two joint defense organizations, the ACF and CCR?
A. That's correct.
Q. And typically during -- well, not typically, but during the period in which T&N was a member of those organizations, that organization would provide the lawyers that would represent T&N in those trials; is that right?
A. For the compensatory aspects of the trials, yes.
In addition, very shortly on -- that was the theory

behind both organizations. However, in practice, as excellent as those individual law firms were, it turned out that they couldn't possibly have absorbed all the historical knowledge about all 18 or 20 companies. And so as a practical matter, I or members of my team, when a case was being tried either by ACF or CCR, and Turner Newall entity, Flexitallic, was being looked like it was going to have some evidence against it, we would supplement those lawyers with one of our own lawyers.

Q. Okay. So you would -- so one of your own lawyers would handle, essentially, the T&N specific portion of a particular case?

A. Sometimes, or sometimes would simply second chair the ACF or CCR lawyer and be able to formulate the appropriate questions.

As I believe I explained to you in my deposition, Turner Newall had a very long complicated history in asbestos, and there was no lawyer -- as good as those lawyers were -- who could possibly have absorbed all the stuff that my people absorbed, because they only had to absorb it about one defendant.

Q. Okay. But as I understand your testimony now, the CCR lawyers handle the compensatory part of the case, the part of the case that would relate to the claimant's damages, causation, expert witnesses related to that portion of the case?

A. That's precisely right.
Q. Now it's also true, isn't it, that you as national counsel, either you or your team, had a role in identifying discovery responses or providing discovery responses and identifying documents for production?
A. That's correct.
Q. And it's also true, isn't it, that with respect to the motions practice that T&N was involved in, all briefs and memorandum of law were prepared either at your firm or under your firm's supervision; is that correct?
A. That's correct. When -- that's correct with respect to the T&N -- with respect to briefs and memoranda that were specific to the T&N company like Flexitallic or T&N. As you could appreciate, in a multi-defendant organization like CCR, CCR might put in a brief on behalf of all those defendants. Maybe it would have to do with chrysotile defense or issues like that. Those kinds of briefs were not reviewed by us.

But every -- basically every brief that was specific to the T&N companies, Flexitallic, those generally speaking, nearly 100 percent of the time would have been reviewed in one fashion or another by myself or someone in one of the firms that I was with over those many years.
Q. Okay. Now on Tuesday you also testified that you settled hundreds of thousands of cases; is that right?
A. That's right. Hundreds of thousands of cases were

settled on behalf of Turner Newall during the period that I had the roles that I had 1981 to 2001.

Q. All right. So -- and I think you make a distinction on behalf of Turner Newall, is that because during the time period when Turner Newall was a member of the ACF and the CCR, those organizations were the ones that handled the direct settlement of claims on behalf of T&N, right?

A. Yes. As I explained to you in my deposition, the -- ACF and CCR years, generally speaking, representatives of those organizations would negotiate directly with lawyers like Joe Rice and the Kazan firm and others.

That is not to say that we didn't have involvement in those settlements, because we did. Because we were paying -- my client was paying a share of all of those settlements.

So we had varying degrees of input, and as members of those organizations, we had to sign off on each and every settlement. Because if we didn't agree with it, then there would be an issue of whether our clients would pay their share when payment was due.

Q. Okay. I just wanted to clear that up. I read the transcript from Tuesday's proceedings and it somewhat suggested that you might have been directly involved with those settlements, and I just wanted to make sure the record was clear that these organizations were the ones during the period in which Turner Newall was a member that were the

fronts of the negotiations in large part?
A. Yes, in large measure. But as I also explained to you in my deposition, Mr. Krisko, there were a number of instances when, because I had been around for some time, or because I had particularly favorable relationships with particular plaintiffs' attorneys, that I was asked to participate with the CCR representative in negotiating those settlements, and that happened from time to time. But on a volumetric basis, most of those settlements over that period of the ACF and CCR, were directly handled by the ACF/CCR representatives.
Q. Now T&N -- and the T&N companies were members of the ACF from 1985 to 1988?
A. That's true.
Q. And T&N and T&N companies were members of the CCR from 1988 to early 2001; is that correct?
A. Something like that. I believe we took one of the companies, maybe Flexitallic out early or maybe it was Turner Newall itself out early in 2000. But it's -- that's pretty close.
Q. Okay. So you use the term stand alone to describe Turner Newell's role when it was not a member of these organizations in your testimony on Tuesday. Do you remember that?
A. Yes, I do.
Q. And that was the period where T&N was charged with negotiating its own settlements and handling its own trials

outside of those defense organizations, right?
A. That's correct.
Q. And that would only apply during the period where you represented the company from approximately 1981 to 1985 and in the year 2001; is that right?
A. Yes. But again with the qualification that I think I've made clear before, which is to say that -- that even during the ACF and CCR years, there were, from time to time, in significant cases or significant volumes of cases, the direct involvement of me or one of my partners in the negotiations.
But I'll give you on a generalized basis what you just asked me.
Q. Okay. The stand-alone periods --
A. Yeah.
Q. -- were accurate in terms of my description?
A. Yes, that's generally -- that is true with the qualification that I've -- I don't want to take the court's time and say it again.
Q. Understand. You also described on Tuesday that the payments that were made by these joint defense organization members, were dictated by a formula I think; is that right?
A. That's right.
Q. Okay. And I think you described the process on Tuesday where -- when members left the group, either the ACF or the CCR, that meant that the remaining members of the group would

pay a bigger share of negotiated liabilities or verdicts or whatever the case may be; is that right?
A. That's correct.
Q. Okay. Now, isn't it true that many of the members of both the CCR and the ACF were producers of amphibole asbestos insulation products?
A. That's true.
Q. Now, is it also true that by agreement in those two joint defense organizations, that no member of either the CCR or the ACF, could, in the context of litigation, lodge a cross-claim against another member of the organization?
A. I think we covered this in my deposition. I did not go back and look at the operative documents, but I believe that must be the case.
Q. Okay. And so that meant that for the period of time in which T&N was a member of one of those groups, Flexitallic, if it was a defendant, could not file a cross-claim against one of the other members, even if they were manufacturers of asbestos thermal insulation?
A. That's correct. Although cross-claims could be asserted, and as you pointed out in my deposition, were deemed asserted with respect to, for example, Flexitallic against a non-CCR or non-ACF member.
Q. Okay. What companies were members of those joint defense organizations?

A. What companies?
Q. Yeah.
A. Well, they were different and I can't give a complete --
Q. Maybe I can just ask you some of the companies.
Pittsburgh Corning.
A. ACF.
Q. Eagle-Picher.
A. ACF.
Q. Celotex.
A. ACF.
Q. Keen.
A. ACF/CCR.
Q. Owens Corning.
A. ACF.
Q. Armstrong.
A. ACF/CCR.
Q. USG.
A. ACF/CCR.
Q. WR Grace.
A. I believe neither, but could have been ACF.
Q. Babcock & Wilcox.
A. ACF.
Q. All right. Mr. Hanly, you described on Tuesday, kind of the nature of Turner Newall, the kind of products that it produced, the asbestos-containing products that it produced.

A. I did.
Q. Is it correct that it manufactured every conceivable kind of asbestos-containing product?
A. That's for sure.
Q. Okay. That would include amphibole products, correct?
A. All three fiber types.
Q. Okay. And is it also true that amphibole asbestos was used in every one of T&N's product lines?
A. I think that's the case. I have a little hesitation about the textiles, but I think that we did make some textiles with some crocidolite. So I think the answer is yes, across the board.
Q. We referenced your deposition a couple times. I think during that process you told me that amphibole asbestos was used in all of T&N's product lines?
A. I believe that to be the case. But having said that, just so the record is clear, Mr. Krisko, of course we made a lot of products with chrysotile. But I believe it to be true that if you take the product categories, asbestos cement pipe, asbestos textiles, sprayed-on insulation, pipe and block, that all of those categories did at one time or another use amphibole asbestos in addition to, in many cases, chrysotile asbestos.
Q. You mentioned earlier your role as -- your specialized role as it applied in the context of litigation when T&N was a

member of one of the joint defense groups, that T&N had a complicated history?
A. Yes.
Q. Is that right? Okay. And it's true that one of those -- well, when you described the history as complicated, are you talking about the cache of corporate documents that demonstrated T&N's early knowledge about the dangers of asbestos?
A. That was part of it. But the other part was the fact that Turner Newall operated through a vertically integrated corporate structure with a parent company, and then numerous subsidiaries in over 110 countries around the world, with all different names and product lines and so on.
So it was -- I dare say that in terms of the corporate structure, it was probably much more complex than what I understand, for example, Garlock's to have been.
Q. Okay. It is true, is it not, that when you were involved in T&N's decisions to settle cases, that you believe that the overriding concern in forming T&N's decision was the effect on a jury of the historical documents that T&N's company had?
A. That's true.
Q. I think you even went on to describe those documents as, "your greatest concern" previously. And it was, in your words, "an avalanche of bad documents"; is that right?
A. Yes. The documents taken together with the unfortunate

situation of plaintiffs dying of mesothelioma were very powerful motivators for me to recommend to the company that it adopt a settlement strategy and avoid trials at all costs.

Q. Okay. In your testimony on Tuesday, Mr. Hanly, you described Garlock as a litigant that sort of kept its head down in the litigation. I don't think you used those words in particular, correct?

A. I believe Garlock, like Flexitallic and as T&N tried to do with less success, kept a relatively low profile until it could no longer do so in the second half of the 1990s.

That's not to say that there weren't times when Flexitallic was claimed against in a significant way before that. And I believe the same may have been true with respect to Garlock.

But in my experience, Garlock was not a vocal defendant in the litigation until pretty much the second half of the 1990s when Longo and folks like that came along.

Q. And you -- we testified -- I don't mean to belabor this, but there were only 10 or less verdicts taken by -- or cases taken to verdict by T&N and its companies during your tenure, correct?

A. Yes. Much less than I heard Garlock took to verdict.

Q. Okay. You are aware that in the '90s alone, Garlock took more than 150 cases to verdict?

A. I think I heard some number like that, yeah.

Q. And I think you reviewed some discovery in this case that outlined a list of Garlock's verdicts?
A. Yes, I saw a chart to that effect.
Q. Okay. When you were representing T&N, defense costs were a factor in how T&N resolved its claims, correct?
A. A relatively minor factor, relative to the indemnity issue.
Q. Right. You mentioned the avalanche of documents were an overriding concern?
A. The indemnity was the overriding concern. The defense costs, we always try to control defense costs. Indeed that was one of the reasons for joinder of the ACF and the CCR. But it was the indemnity part of the equation, if you will, that drove our settlement decisions and drove our decision to join those two organizations.
Q. Okay. And I believe you testified previously that the principal source of liability for the T&N companies lay with the sale of its amphibole asbestos-containing products; is that right?
A. That was the principal concern until the very late 1990s when another concern arose, which was the concern about Longo and Flexitallic. But it was -- yes, the amphibole aspect was a major concern.
Q. Okay. Do you recall giving testimony in the Federal Mogul bankruptcy?

A. I do.
Q. This is a transcript of a hearing before that court. Do you see that?
A. Yeah, I do.
MR. PHILLIPS: What page, Mr. Krisko?
MR. KRISKO: Page 89.
Q. Okay. This is your testimony here. You were asked about, I think the chrysotile defense, and the question was:
Q. "Was this a defense that was very often available to Turner Newall?
A. "No, it was -- it was not available to Turner Newall, except in some very, very limited types of cases. It was not available to Turner Newall, because Turner Newell's -- the principal source of Turner Newell's liabilities lay with the sales of the brown and blue asbestos-containing products".
Is that correct?
A. That's correct. But as I believe I pointed out to you in my deposition, the question that I believe is unanswered about my testimony in this case is whether in the questions and my answers about Turner Newall, that was meant to include Flexitallic.
As we saw earlier in the testimony of Mr. Patton, actually on the trust claims forms they distinguished between Turner Newall, Flexitallic and Ferodo.

So I just don't know whether -- I don't recall whether these questions were meant to include Flexitallic or not. Certainly this answer relates to Turner Newall and not Flexitallic.

Q. And Flexitallic was one of the companies that filed for bankruptcy with Turner Newall, correct?

A. Yes, that's correct.

Q. Is that right?

A. That's correct.

Q. And can we go back to the first page and just make note for the record when this testimony was given?

It looks like this testimony was given June 14, 2005.

A. I'll accept that.

Q. Okay. He can see it there. All right. Thank you.

Turning back to T&N's relationship with the joint defense organizations.

What share -- well, let's just focus on the CCR. What share of CCR's defense costs were paid by Turner Newall?

A. I don't recall that -- I don't recall the share. I do know that because of the very large number of so-called big defendants in ACF, it was a very small share, but I couldn't give you a percent.

Q. I was talking about CCR. I think you just testified members of ACF?

A. I thought that was your question.

Q. Let me ask you about what share of CCR's defense costs to Turner Newall and its companies pay?
A. I don't recall that. It varied, I think, year to year.
Q. Okay. You can't characterize it in any respect in terms of percentage or a fraction?
A. Well, in the early days I think there were 22 members of the CCR or 18 members or so. So in the early days it probably was on the order of 10 percent. But then it would -- it would increase over time. At the end it was probably up in the 20s or 30s.
Q. Okay. Now you have -- you would agree that defending asbestos personal injury case is expensive, correct?
A. It is.
Q. Okay. Cases can cost $500,000 or more?
A. To try?
Q. To defend. Yeah, to try.
A. Yes.
Q. Okay. Now you gave testimony early today and some on Tuesday about the low dose or the encapsulation defense?
A. Yes.
Q. Is that right? And I understand that it's your opinion that the low-dose defense is not an effective defense before a jury; is that right?
A. Generally speaking, I believe that to be the case. Although, as with any generalization there are exceptions and

certainly those exceptions were testified to in the case of Garlock's trial record.

Q. You testified on Tuesday about the Wells versus U.S. Gypsum case in Beaumont, Texas?

A. I did.

Q. That's the only case you cited in connection with the opinions you're offering this court today?

A. No. I referred also to -- when you say cited, you mean in my report, or do you mean in my testimony. Because in my testimony earlier today I mentioned the Hoskins case which we discussed in deposition you took of me. And I also mentioned some verdicts against Flexitallic in the millions of dollars in California.

Q. You are correct. Wells is the only case that you actually mentioned in your report as the basis for your opinion. I do not recall that the Hoskins case was discussed during your deposition, but we'll get to that in a minute.

But in describing the Wells case, you said that was a case where Flexitallic put on encapsulation defense; is that right?

A. I have not reviewed the trial transcript, but that has always been my understanding that that defense was put on through Dr. Rich Lee.

Q. Okay. You, in your report, and I think you agreed with me at your deposition, that the Wells case was perhaps the

most telling example of difficulties of convincing juries of the merits of the encapsulation defense; is that right?
A. That's what it says, yeah.
Q. That's your opinion, right? This is an excerpt from your report, correct?
A. Well, yes. That was the -- I was trying to convey part of the basis for that opinion that is set forth in that section of my report.
Q. Okay. And this is the most telling example in your words, correct?
A. It was the one that I could tell, because it was one that was vividly in my mind as recounted to me by the trial folks in that case.
Q. You -- this was a case -- the Wells case, where there were multiple plaintiffs involved; is that correct?
A. Yeah, it was a consolidation, I believe, of 18 plaintiffs.
Q. And the plaintiffs alleged not mesothelioma, but asbestosis as the basis for their claims; is that right?
A. Well, they were nonmalignant. There were no mesotheliomas. I don't know whether they said it was asbestosis or pleural changes or whatever. But it was definitely not -- there were no mesotheliomas in the group of cases.
Q. And they had sued a number of defendants in that case,

right?
A. That's correct.
Q. And a number of those defendants had settled before trial; is that right?
A. Ahh -- yes -- well, one settled before trial. I don't know how many settled before trial. And one very major one went into bankruptcy shortly after the CMO was entered in that case.
Q. Okay. And that's -- you talked about that a little bit on Tuesday, that was the Owens Corning company?
A. Yes, that company was a defendant in the Wells case, filed for bankruptcy three months before the Wells trial.
Q. So the Wells trial was, I think you said in January of 2001?
A. That's correct.
Q. And Wells -- or excuse me, Owens Corning filed for bankruptcy in October of 2000?
A. That's correct. I believe that to be the case.
Q. That's what you testified to on Tuesday, so I will rely on that as well.
Now, this was a case, Wells, that you oversaw in your role as national counsel, correct?
A. Yes, that's correct.
Q. You did not attend the trial, but one of your partners attended the trial?

A. One of my partners attended part of the trial. I believe put on the retired president of Flexitallic. I don't know whether he was there for the testimony of Dr. Lee or not. I thought -- I think he was -- I think he was but I don't know.
Q. You did closely monitor the trial, though; is that correct?
A. I had reports on a regular basis in that case. And at the same time as I now recall, I also had settlement discussions with some lawyers representing the plaintiffs -- not the trial lawyers but other lawyers.
Q. Okay. It is true that you had conversations with people involved in the trial many times per day during the trial?
A. If I said many times per day, certainly on a daily basis. But whether it was many times a day, I'm not sure it was many times a day.
Q. That's what you told me when I took your deposition, do you remember that?
A. I may have said that. I certainly had multiple -- there were multiple days on which I had several conversations. There were probably days on which I had many conversations.
Q. Okay. Now you described the verdict that Flexitallic took in this case. After Flexitallic -- after the verdict you hired appellate counsel to prosecute the appeal; is that right?
A. I hired appellate counsel to -- who filed a post-trial

memorandum which you called to my attention, and they were also supposed to prosecute an appeal, but I don't recall whether the appeal was ever prosecuted.
Q. Okay.
A. Because we filed for bankruptcy.
Q. Okay. So but -- you mentioned the post-trial memorandum --
A. Yes.
Q. -- or motion, I think it is --
A. Yes.
Q. -- properly described as. That was prepared by lawyers that you hired, you hired to handle the appeal, right?
A. That's correct.
Q. And they prepared that motion at your direction?
A. That's correct.
Q. Okay.
A. I mean, we told -- we asked them to prepare a motion. We certainly didn't direct the specifics of the motion because they were Texas lawyers and we weren't.
Q. Now you testified earlier that you or members of your firms would review all motions and memoranda that were filed on T&N or T&N company's behalf?
A. Generally speaking, that's correct.
Q. Okay. And this was a substantial verdict that was entered against Flexitallic?

A. Very substantial.
Q. Was it the largest verdict that Flexitallic had ever taken?
A. Did you say was it?
Q. Wasn't it the largest?
A. Wasn't it the largest? Yes, it was the largest.
Q. And so you would have been very interested in pursuing all legal remedies for Flexitallic as its national counsel, correct?
A. Yes.
MR. KRISKO: Your Honor, may I approach the witness?
THE COURT: Yes.
THE WITNESS: Thank you.
MR. KRISKO: Your Honor, this is GST 0574.
(Plaintiff's Exhibit 0574 was marked for identification.)
BY MR. KRISKO:
Q. Mr. Hanly, is this the post-trial motion that you described?
A. Give me one second, Mr. Krisko. Yes.
Q. Okay. Let's take a look at that.
The motion suggests, does it not, Mr. Hanly, that the Wells case was not typical. In fact, I think the first bulleted heading of your motion describes the case as one as being unfair and unusual in obtaining an extreme result; is

that correct, accurate?
A. That's -- that's what it says, yeah.
Q. Isn't that an accurate characterization of the Wells case?
A. Well, it's an argumentative statement, which is certainly appropriate for counsel to make following a verdict. Under the particular circumstances, that was the view at the time.
Q. Okay. But you don't dispute that the lawyers hired described this case as unfair and extreme result with unusual circumstances, correct?
A. That's correct. I certainly regarded it as unfair, in view of the size of the verdict.
Q. Okay. Now at page 3 of the motion you describe an ambush of sorts. It says, "Flexitallic was ambushed when the plaintiffs disclosed for the first time at the pretrial conference, that they had been exposed to asbestos in Flexitallic products"; is that correct?
A. That's what it says, yes.
Q. Okay. And is that in fact true?
A. Well again, the statement, Flexitallic was ambushed, is an argumentative statement made by counsel in an attempt to persuade Judge Mathy who was the trial judge, to set aside the verdict. It's argumentative and appropriate, I believe advocacy.
Q. Okay. Well what about the portion of the sentence that

says "The plaintiffs disclosed for the first time at the pretrial conference that they had been exposed to asbestos in Flexitallic products." Is that part true?
A. Well, yes, it's true. But, Mr. Krisko, there's more to this record which you didn't show me in my deposition, which indicates that that statement is true, but not the entire story. Which again was completely appropriate for counsel to have stated in that fashion, because they were making this motion to the very judge who had overseen the entire proceeding.

But there was much more to the story that, as a good advocate for Flexitallic, was not necessary to reflect in Flexitallic's brief, because the judge was well aware of it.
Q. But it was Flexitallic's position, I think, generally, that it -- the proceedings were unfair, unusual in the respect that this discovery or this identification of Flexitallic exposure was not made until the final pretrial conference, correct?
A. Yes. Yes, Mr. Krisko that is the position that was taken.

However, what you did not disclose to me in your examination of me at the deposition, which is totally appropriate because it is as on cross-examination is that Flexitallic had waived the deposition of all the plaintiffs by not complying with the CMO by taking their depositions by

December 1st, 2000.

So these statements are completely appropriate on behalf of Flexitallic's counsel. Again, because they were being made to the trial judge, who was well aware that Flexitallic had in fact waived its right to take the depositions of each and every one of the 18 plaintiffs.

Q. Okay. Was it a common practice of you to waive Flexitallic's rights to take plaintiff's depositions?

A. No.

Q. Okay. All right. And I think you just mentioned that Flexitallic could have taken depositions by December 1st?

A. That's correct.

Q. Okay. You provided some explanation on Tuesday about how the decision not to take discovery was informed by the Owens Corning bankruptcy; is that right?

A. I don't believe that that was my testimony. What I was trying to convey on Tuesday -- was it Tuesday that I was here? I'm sorry.

Q. (Nodding head.)

A. What I was trying to convey on Tuesday was that Owens Corning was in the case. Owens Corning was -- had been taking the lead in all the cases in east Texas in those years, filed for bankruptcy four days after the court entered the CMO. And the remaining defendants, including Flexitallic, for reasons that I don't recall, simply did not comply with the CMO, and

did not take the depositions by December 1st as ordered by Judge Mathy.

Q. That was the reason that Flexitallic didn't know until the final pretrial conference that there was product ID for the Flexitallic product by these plaintiffs?

A. Well, I don't know what would have come out in the depositions of the 18 plaintiffs if they had been taken pursuant to the CMO, whether those plaintiffs would have identified Flexitallic products or not. But the fact of the matter is, that Texas counsel working for Flexitallic, did not comply with the CMO.

And there were lots of decisions, unusual decisions made by counsel across 20 years of asbestos litigation. This would not be the first time that defense counsel would waive a deposition or do something that in a one off case you or I would regard as not appropriate.

Q. It appears looking at that second sentence that the court allowed Flexitallic to cure their concealment, speaking of the plaintiff's actions --

A. Yeah.

Q. -- by conducting a mass deposition of most of the 22 plaintiffs at once; is that correct?

A. That's correct. And I believe that occurred.

Q. Okay. Now looking at that second box there, that's a later sentence in this page three, it says "the mass

deposition was infected with errors."
A. Yes.
Q. "First, the mass deposition was limited to 15 minutes total for each plaintiff."
Is that right?
A. Yes, that's correct.
Q. Was that the limit to the extent of which Flexitallic was allowed to depose the plaintiffs in this case?
A. Yes. And again, after you took my deposition and confronted me with this one document from the case -- which as I say, Mr. Krisko, was entirely appropriate on your part -- I learned that in fact when they took these depositions, they didn't even use up the 15 minutes.
Q. So Flexitallic didn't -- chose not to even conduct 15 minutes' worth of discovery of these plaintiffs?
A. Apparently so.
Q. Okay.
A. They did do these many depositions, but they didn't even use up the whole 15 minutes per plaintiff.
Q. Okay. Lastly let's look at this third box.
Second, the scope of this mass deposition was limited to questions about the plaintiff's identification of the defendant's products, and Flexitallic was not allowed to inquire about other sources of asbestos exposure, paren, which is crucial to the defense theory, end paren.

Do you see that?
A. Yes, I do.
Q. Is it true?
A. I assume it was true, because these were very distinguished lawyers that I hired to work on the post-trial motion and potentially the appeal.
Q. Now focusing on the last part of that sentence, "it is true, isn't it, that sources of asbestos exposure, other than the defendants' products are crucial to the defense theory."
A. There was certainly the position in this particular case, and that is the reason that Flexitallic and U.S.G., which was the other trial defendant, urged a verdict sheet that included boxes for -- to lay off percentages on non-courtroom defendants.
Q. Okay. That's crucial to the defense theory for all low-dose chrysotile defendants, correct?
A. I'm not sure that I could go that far. It's certainly crucial in many low-dose cases, I certainly will give you that.
Q. Okay. Well, let's talk some more about this case. Let's talk about experts.
You mentioned that Flexitallic had called one expert Dr. Lee; is that right?
A. Yes.
Q. And one of the complaints that Flexitallic makes in its

brief reveals that the court actually excluded the report of Flexitallic's only expert witness at trial; is that right?
A. Yes. But again, Mr. Krisko, there's more to the Court record than this. And what the Court excluded were the expert reports of the plaintiffs and the defendants on hearsay grounds.
Q. Okay. And -- but your position was, that that was a mistake on the trial court's part?
A. It was a permissible point to make to the trial judge, who himself was the jurist, who had excluded Flexitallic's report and the reports of the plaintiffs.
Q. Now, is it correct that Flexitallic only called one expert witness at this trial?
A. I believe that Flexitallic called only one witness. Of course U.S.G. was in the trial, and I don't recall whether U.S.G., for example, called a chrysotile witness, a chrysotile -- oh no, it wouldn't have. I'm sorry. Because there were no mesos.
I certainly believe that Flexitallic called only one witness.
Q. Okay.
A. One expert witness, yes.
Q. Okay. Now this next box here is an expert -- an excerpt from the plaintiff's response brief, response to this motion. I think actually the ACC produced this to us and has

identified it as Exhibit ACC 0738. On page 7 of that brief, it says, "that neither defendant called any witness to dispute the specific causation evidence. In fact, neither defendant had an expert who ever examined the plaintiff"; is that right?
A. That's what the plaintiff said, and I don't know whether that's true. I just don't have any idea.
Q. So it's true that neither defendant called a -- a industrial hygiene or medical doctor to offer any opinions on causation in this case?
MR. PHILLIPS: Objection; asked and answered.
THE COURT: Overruled. Answer it if you can.
THE WITNESS: That may well have been the case. As I said, a lot of things didn't happen that should have happened, once Owens Corning filed for bankruptcy, two and a half months before this trial.
BY MR. KRISKO:
Q. Looking at that last sentence it says, "that neither defendant had an expert that ever examined the plaintiff."
A. Yes.
Q. Isn't it unusual for defendants not to engage physicians to examine plaintiffs, especially in asbestosis cases?
A. Generally speaking it's unusual, but it's not unheard of.
Q. But Flexitallic did not do this in this case?
A. Apparently not.
Q. Okay. All right. Okay. So again, Mr. Hanly, you've

identified this case as the most telling example. But it doesn't seem to be that usual, as I think you've now testified. We talked about the ambush of Flexitallic with new exposure evidence. You said that really was on the part of Flexitallic's waiver of its opportunity to take depositions. They were limited to 15-minute depositions. You said that Flexitallic chose not even to take all that time. Flexitallic indicated that it was denied discovery that was crucial to its defense. It only hired one expert. Called no causation experts. And it hired no medical witness to examine asbestosis plaintiffs; is that all correct?

A. That's generally correct.

Q. Okay. Now having seen your -- having you held out Wells as a case that this court should look to to support your opinion, we decided to look at cases that Garlock tried in Texas in 2001. Okay, and I think you testified earlier that you reviewed Garlock's list of verdicts.

And there's a first case there, the Hines case. That was a mesothelioma case, a pipefitter, where the jury awarded only one percent of $1.3 million verdict -- or found Garlock liable for only one percent of $1.3 million verdict. Did you see that case?

A. Did I see that case when?

Q. When you reviewed Garlock's verdict history.

A. If it was on there, I saw it.

Q. But you didn't -- did you think to compare Garlock's outcomes with the outcome in the Wells case in forming your opinion?
A. No, I don't know. Do you know, is that a case that was tried in Beaumont?
Q. It was tried in Texas.
A. Texas is a big state.
Q. Okay.
A. With a lot of different counties.
Q. Okay. Well let's just look briefly at the verdict form for the Hines case.
Here's the verdict form from the Hines case. It's from Hunt County, Texas, it appears. You can see that it was April of 2001, correct?
A. That's what it says, yeah.
Q. Turning to, I guess, the portion of the verdict sheet where the jury has assigned percentages of liability, you can see that Garlock was assigned only one percent, correct?
A. Yes.
Q. Okay. Also notice that 85 percent was assigned to a non-present company, AC&S. Do you see that?
A. I do.
Q. You testified on Tuesday about the difficulties of the empty-chair defense; is that correct?
A. I did.

Q. Okay. This would be an example where Garlock was successful in making the empty-chair defense, correct?
A. There's no question, Mr. Krisko, that Garlock has been successful in the cases that you've put up in this courtroom as examples. Statistically they are an insignificant percentage, I believe, that's been accepted of the total volume of mesothelioma cases that were pending against Garlock so...
Q. Okay. Well, the other two cases that went to verdict in Texas in the same year that Wells was tried, was the Plummer case, a living mesothelioma case with a Navy machinist made where Garlock was found not liable at all. Did you see that?
A. I see it up there, yeah.
Q. You probably saw it on the verdict sheet that you reviewed?
A. If it was on the verdict sheet that was provided to me by you or by Garlock through the ACC, then I did see that.
Q. Did you also see the Wilson case, the Leonard Wilson case, a mesothelioma pipefitter where Garlock was also found not liable in any respect? That's another Texas case.
A. I will represent that I saw that case if you represent it was on that list. I will adopt that.
Q. Okay. Well you mentioned -- I didn't recall you mentioning the Hoskins case during our deposition. In any event we --

A. I referred -- if I did not -- well, your team will have -- will have a index so you can see if Hoskins is in there. But I do recall specifically telling you about a case in Kansas City where the plaintiff's lawyer was Louis Accurso (phonetic) that resulted in approximately a $10 million verdict.

Q. Okay. I didn't recall that you mentioned the plaintiff's name --

A. Perhaps I did not. I might not have remembered it then.

Q. Well let's look at -- we did some research on Flexitallic's verdict history as well. And keeping in mind that your testimony is that there were 10 or fewer cases tried to verdict in T&N/Flexitallic history, we wanted to look a little more closely at that time.

Now, you did mention, I do remember this, Mr. Hanly, that there was a case tried in Portland, Oregon by Flexitallic in the late 1990s, that resulted in a defense verdict. Do you see that?

A. I did testify to that.

Q. Okay. And is that correct?

A. Is what correct?

Q. Is your testimony correct? Was your testimony about the Portland, Oregon case correct?

A. Well, that was my testimony.

Q. Okay. All right.

A. And if what you have up here is actually a case that indicates there was a defense verdict in the late 1990s in Portland, Oregon, then that was the case I was referencing in my deposition.
Q. Okay. And that would be the case where Flexitallic presented the encapsulation defense and was successful, correct?
A. I would presume it presented the encapsulation and chrysotile defense.
Q. Okay. Another case, the Lewis case from San Francisco in 2000, another defense verdict. Are you familiar with that case, Mr. Hanly?
A. I'm not, but it doesn't surprise me. But I don't recall the name Lewis.
Q. Okay. But do you recall that Flexitallic was successful in obtaining a defense verdict?
A. Yeah. Flexitallic -- Flexitallic had the same defense that Garlock does, and so it's not inconceivable that Flexitallic won some cases which I testified to in my deposition. At the time of the petition, I believe there were 100,000 Flexitallic cases pending.
Q. Okay. I'm just focused on the ones that were tried to verdict, and these are ones that --
A. I understand that. I'm happy to go through this with you, sir.

Q. Okay. All right. Richmond case, another San Francisco case. This is from 1995. Flexitallic was assigned 0.5 percent of liability in that case. Do you see that?
A. Yeah. I see that.
Q. Is that accurate?
A. Yes.
Q. The Mark case, 2001, mesothelioma. Again, another full defense verdict for Flexitallic; is that right?
A. I had a good team.
Q. Okay. And then finally the Warde case. This is a Seattle, Washington case from 2001. That's a Flexitallic defense verdict, correct?
A. I accept that.

MR. KRISKO: No further questions, Your Honor.

THE COURT: Okay. Mr. Phillips.

REDIRECT EXAMINATION

BY MR. PHILLIPS:
Q. Mr. Hanly, Flexitallic wasn't included in the estimate you were testifying about in the transcript that Mr. Krisko showed you from the Federal Mogul proceeding; isn't that right?
A. I believe that to be correct. I did have a distinct recollection that the questions asked me by the ACC in that case before the United States District Court excluded Flexitallic, but I didn't know why. If it was because the

estimation, I accept that.

But I had a distinct recollection that when I talked about Turner Newall in that case -- and indeed, when I've talked about Turner Newall, I have always tried hard to distinguish Turner Newall from Flexitallic, notwithstanding that Flexitallic was part of the Turner Newall family.

MR. PHILLIPS: ACC 709, please.

Q. Mr. Krisko was focusing a lot on this amended motion for a new trial and your motion for remittitur that Flexitallic filed.

A. Yes, in Beaumont, Texas.

MR. PHILLIPS: May I approach, Your Honor?

THE COURT: Yes.

BY MR. PHILLIPS:

Q. What happened with that motion? Did the judge grant it?

A. Well, the judge granted it in part. As we can see here in the first paragraph, Judge Mathy, looks like limited future medical expenses to $150,000 for any of the 22 plaintiffs. I thought there were 18, but 22 now strikes me as correct.

And he denied the motion in other -- in all other respects. Which is to say he denied that part of the motion which Mr. Krisko called my attention to concerning the deposition, the 15-minute deposition, the alleged nondisclosure of product ID, et cetera.

Q. Okay. So the judge denied the motion?

A. Yes. This was the same judge, by the way, who had actually entered the CMO and tried the case.
Q. We've now heard about Garlock's trial record, Mr. Krisko was asking you about that. Does that trial record impact your opinions at all?
A. No, it is an insignificant -- it's the bucket in the ocean.
MR. PHILLIPS: No further questions, Your Honor.
THE COURT: Okay. Step down. Thank you, Mr. Hanly.
THE WITNESS: Thank you, Your Honor.
THE COURT: Thank you for coming back. Sorry we had to double you back.
THE WITNESS: Not at all, Your Honor.
MR. PHILLIPS: Your Honor, I would ask to admit Mr. Hanly's report under the same grounds we've admitted other expert reports.
THE COURT: All right.
(ACC Exhibit No. 636 was received into evidence.)
MR. KRISKO: Your Honor, I would like to admit the motion we discussed, GST 0574.
THE COURT: All right. We'll admit that.
(Debtors' Exhibit No. 0574 was received into evidence.)
MR. KRISKO: Thank you, Your Honor.
THE COURT: Do you want to start on something else,

or do you want to --

MR. PHILLIPS: Your Honor, I would also like to move in the order that we discussed.

THE COURT: We'll admit that.

(ACC Exhibit No. 709 was received into evidence.)

THE COURT: Why don't we take a break and come back at 1:30. Okay.

MR. GUY: Thank you, Your Honor.

(Lunch recess.)

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
CERTIFICATE OF REPORTER

I, Laura Andersen, Official Court Reporter, certify that the foregoing transcript is a true and correct transcript of the proceedings taken and transcribed by me.

Dated this the 8th day of August, 2013.

s/Laura Andersen
Laura Andersen, RMR
Official Court Reporter